

Article 1 – Zoning Regulations

5-101. Purpose and Short Title.

A. **Purpose.** These Zoning Regulations are adopted for the purpose of:

1. Promoting the health, safety, morals, comfort and general welfare, and conserving the values of property throughout the City of Mission Hills, Kansas;
2. Lessening or avoiding congestion in the public streets and highways;
3. Securing safety from fire and other dangers;
4. Providing adequate light, air and greenspace;
5. Preventing the over-crowding of land;
6. Avoiding undue concentration of population;
7. Facilitating the adequate provision of transportation, water, sanitary and storm sewerage, parks and other public requirements; and
8. Providing comprehensive regulation of the use and development of land in conformance with the Comprehensive Plan.

B. **Title.** This article shall be known as the Zoning Regulations of Mission Hills, Kansas, and may be referred to herein as "Zoning Regulations".

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5-102. Usage.

A. For the purpose of these Zoning Regulations, certain terms or words used herein shall be interpreted as follows:

1. Words used in the present tense include the future tense.
2. The singular includes the plural.
3. The word "person" includes a corporation as well as an individual.
4. The word "lot" includes the word "plot" or "parcel".
5. The term "shall" is always mandatory.
6. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".

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5-103. Definitions. For the purpose of these Zoning Regulations, certain terms and words used herein shall be defined as set forth in the following Sections.

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5-103.1. Accessory Structure: A subordinate structure, other than a building, having a use customarily incident to and located on the lot occupied by the main use of the property. Accessory structures include, but are not limited to, pools, patios, decks, stoops, outdoor recreational facilities, driveways, walkways, fences, walls and retaining walls.

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5-103.2. Alteration: Any addition, removal, extension, or change in location of any exterior surface of a principal building, detached accessory building or accessory structure.

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5-103.3. Antenna, Dish: Any circular or similar dish shape receiving antenna generally used for highly specialized industrial communications or for receiving television signals from a satellite.

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5-103.4. Antenna, Large Dish: All Dish Antenna with a diameter that is greater than twenty (20) inches.

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5-103.5. Antenna, Small Dish: All Dish Antenna with a diameter that is twenty (20) inches or less.

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5-103.6. Antenna, Large Standard: All Standard Antenna with a height greater than ten (10) feet.

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5-103.7. Antenna, Small Standard: All Standard Antenna with a height that is ten (10) feet or less.

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5-103.8. Antenna, Standard: Any array made up of metal tubing, wires, cables,
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or towers and being of varying shapes and sizes, commonly installed on the roof of residential buildings for receiving local television and radio signals or for transmissions or receiving radio signals of a special nature including amateur, citizens band or other frequencies.

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5-103.9. ARB: Mission Hills Architectural Review Board.

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5-103.10. Architect: Any person who has received a college degree in architecture or a Licensed Architect.

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5-103.11. Architect, Licensed: A person who is duly licensed to practice architecture in any of the states of the United States.

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5-103.12. Art: Any object displayed purely for ornamental purposes. If attached to a structure that is required for support it shall be subject to ARB approval as a structure.

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5-103.13. Basement: A lower story, the floor of which lies below the finished exterior grade at the front of the building, the average elevation of said exterior grade being above the middle of the interior height of such story.

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5-103.14. Basketball Goal: A backboard, rim and net, typically mounted to the roof or siding of the principal building, detached garage, or to a free standing pole.

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5-103.15. Block: A piece or parcel of land entirely surrounded by streets, streams, parks, or a combination thereof. In cases where platting is incomplete or disconnected, the Commission shall determine the outline of the block.

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5-103.16. Board: Mission Hills Board of Zoning Appeals.

Ord. 1267 09-14-09

5-103.17. Building: Any structure having a roof supported by columns or by walls

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and intended for the shelter, housing or enclosure of persons, animals or chattel.

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5-103.18. Building, Detached Accessory: A building separated by open space from the principal building on the same lot and having a use customarily incident to the main use of the property. Detached accessory buildings include, but are not limited to, detached garages, storage sheds, gazebos, and buildings related to the use of outdoor recreational facilities.

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5-103.19. Building, Principal: The building housing the main use of the property on which it is situated. A building housing an accessory use is considered an integral part of the principal building, when it has any part of a wall in common with the principal building or is under an extension of the main roof and designed as an integral part of the principal building. A building which is not considered an integral part of the principal building shall be deemed a detached accessory building. A structure which is attached to the principal building but which does not have a roof shall be considered an accessory structure, and shall not be considered part of the principal building.

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5-103.20. Building Line - Front: A line established, in general, parallel to the front street line between which and the front street line, no part of a building or structure shall project, except as otherwise provided in these Zoning Regulations.

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5-103.21. Building Line - Side: A line established on a corner lot, in general, parallel to the property line of the side street between which and said property line no part of a building or structure shall project, except as otherwise provided in these Zoning Regulations.

5-103.22. City: City of Mission Hills, Kansas.

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5-103.23. City Administrator: The individual appointed to the position of City Administrator or his duly authorized representative.

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5-103.24. City Clerk or Clerk: The individual appointed to the position of City Clerk or his or her duly authorized representative.

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5-103.25. Commercial Filming: Any photography, filming, video or other photographic process at any location within the City, including preparation and clean up of the location, for a commercial purpose.

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5-103.26. Commission: Mission Hills City Planning Commission.

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5-103.27. Comprehensive Plan: The Comprehensive Plan, including any amendments thereto, which has been adopted by the City Planning Commission pursuant to K.S.A. 12-704.

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5-103.28. Concurrent Construction Project: A Substantial Construction Project for which a valid building permit exists at the same time as a valid building permit for at least one other Substantial Construction Project that is located within five-hundred (500) linear feet and on the same or an abutting street, as measured along the street(s) in each direction from the subject property. A Substantial Construction Project that has already commenced as the only Substantial Construction Project within five-hundred (500) linear feet in either direction and is still involved in Significant Construction Activity shall become classified as a Concurrent Construction Project at the time that a valid building permit is issued for another Substantial Construction Project within five-hundred (500) linear feet on the same or an abutting street, at which time all of the Concurrent Construction Project requirements shall become applicable. A Substantial Construction Project for which Significant Construction Activities have commenced prior to the effective date of this Ordinance shall not become a Concurrent Construction Project.

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5-103.29. Construction: The act of building a structure, including the physical preparation of land such as clearing, grading and excavating prior to the use of building materials, but excluding exterior demolition activities.

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5-103.30. Container: An enclosed or partially enclosed compartment or box, with or without wheels, and not permanently affixed to the ground surface, which is intended to be used for collecting, storing, holding, or otherwise depositing personal property, objects, trash or construction debris, including portable storage boxes, moving compartments, dumpsters, and roll-aways.

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5-103.31. Council: Mission Hills City Council.

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5-103.32. Court, Inner: A court enclosed on all sides by exterior walls of a building or by exterior walls and lot lines on which walls are allowable.

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5-103.33. Court, Outer: An open, unoccupied space, bounded on two or three sides by exterior walls of a building, and on the other side by yards, streets or alleys.

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5-103.34. Cul-de-sac: A street having one end open to traffic and being permanently terminated by a traffic turnaround.

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5-103.35. Curb Level: The mean level of the curb in front of the lot, or in case of a corner lot, along that abutting street where the mean curb level is the highest.

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5-103.35.5 Deck or Patio: An area adjacent to the Principal Building constructed of pavement or wood.

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5-103.36. Delayed Rebuild: A situation involving a stipulated condition, as specified by the Applicant in the permit application for exterior demolition, under which the Applicant plans to rebuild a principal building on the property; provided that Significant Construction Activities are unlikely to commence immediately upon completion of Substantial Exterior Demolition, but will commence within one-hundred twenty (120) days after issuance of Substantial Exterior Demolition permit.

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5-103.37. Disability: With respect to a person, (a) a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) a record of having such an impairment; or (c) being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the controlled substance act (21 U.S.C. 802).

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5-103.38. Dwelling: A principal building or portion thereof, designed exclusively for residential occupancy, including residential-design manufactured homes and other

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manufactured homes, but not motels or hotels.

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5-103.39. Dwelling, One-Family: A principal building arranged, intended or designed for residential occupancy by one family and any domestics.

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5-103.40. Easement: A grant by the property owner to the public, a corporation, or persons of the use of a strip or parcel of land for specific purposes. Easements granted to a person or entity for the benefit of the public or to the public shall be called "utility easements" and be designated "U/E". Easements reserved on recorded plats to the subdivider for contingent usage and the use of which is subject to permission by the subdivider shall be called "rights-of-way" and may be designated "R/W". Easements may also be acquired by exercising the power of eminent domain.

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5-103.41. Election Date: The last day on which a vote may be cast in person, by mail or by other means, in an election in Johnson County, Kansas, as established pursuant to K.S.A. Chapter 25, as amended.

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5-103.42. Family: One (1) or more persons who are related by blood, marriage or adoption, living together and occupying a single housekeeping unit or a group of not more than three (3), not so related living together by joint agreement and occupying a single housekeeping unit (as distinguished from a group occupying a boarding or lodging house or similar dwelling for group use), on a nonprofit, cost-sharing basis, or both.

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5-103.43. Fence: A structure typically constructed of posts carrying boards, rails, pickets, metal bars or metal mesh erected around or by the side of an open space.

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5-103.44. Fence Construction (Construction Fence): An open-wire fence or other pre-approved style of fence identified as a Construction Fence with a lockable gate that encloses the entire demolition- or construction-affected area, including areas for soil stockpiling, demolition or construction debris receptacle, and demolition or construction equipment and materials staging, but excluding the areas for gravel-covered off-street parking and the portable restroom. The fence shall be between four feet (4') and six feet (6') in height. The fence shall satisfy the multiple purposes of providing a sturdy physical barrier and retaining demolition- or construction-related debris on-site, while resulting in as little visual impact as possible under the

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circumstances. The fence must be secured with set posts. Flexible plastic fencing typically used to mark and separate construction zones does not satisfy the requirements for Construction Fencing, but may be used around trees located within the fenced area. The Construction Fence in the front yard is only allowed during demolition and/or construction, and must be removed once those processes are complete.

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5-103.45. Fence Return: That portion of a fence constructed between the side lot line and the principal building or detached accessory building and running approximately perpendicular to the side lot line.

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5-103.46. Fence, Wall or Retaining Wall Section: That portion of a fence, wall or retaining wall constructed between two (2) vertical fence posts or pillars.

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5-103.47. Flag: Any piece of cloth, canvas or other flexible material typically rectangular or triangular in shape which is attached at only one side to a staff, halyard, or flagpole; provided that, the side of the flag that is attached to the staff, halyard or flagpole may not be less than a forty-five (45) degree angle to the ground when the flag is displayed.

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5-103.48. Flagpole: A pole no more than twenty-five (25) feet in height used solely for the purpose of raising and displaying a flag.

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5-103.49. Garage, Private: A detached accessory building or portion of a main building used for storage of passenger vehicles consistent with requirements set forth in Section 5-139.

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5-103.50. Golf Club: Includes any private golf course (use limited to members and guests) and accessory facilities, but excludes separate and independent miniature golf courses and driving ranges.

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5-103.51. Grade, Established: The elevation of the center line of the streets as officially established by the City authorities.

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5-103.52. Grade, Finished: The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

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5-103.53. Group Home: Any dwelling occupied by not more than ten (10) persons, including eight (8) or fewer persons with a disability who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by a regulatory agency of this state.

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5-103.54. Half Story: See Story.

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5-103.55. Home Occupation: A business conducted incidental to the residential use of a property, generally within a dwelling by resident occupants. All such home occupations shall conform to the standards set forth in Section 5-114.

Ord. 1354 10-08-12

5-103.56. Lot: A portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one principal building and the detached accessory buildings or accessory structures customarily incidental to it.

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5-103.57. Lot, Adjacent Interior: An interior lot that shares a common border with a corner lot.

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5-103.58. Lot, Corner: A lot abutting upon two (2) or three (3) streets at their intersection.

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5-103.59. Lot Depth: The horizontal distance from the front street line to the rear line of a lot

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5-103.60. Lot, Interior: A lot whose side lines do not abut upon a street.

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5-103.61. Lot, Net Area of: Area of lot exclusive of street right-of-way.

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5-103.62. Lot Size: The total area or square footage of a lot, regardless of subdistrict classification. Lot Size (LS) classifications are set forth in Section 5-118.

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5-103.63. Lot, Through: An interior lot having frontages on two (2) streets, as distinguished from a corner lot.

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5-103.64. Lot Width: The horizontal distance between the side property lines of the lot. The width of the lot shall be measured at the required Front Building Line.

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5-103.65. Manufactured Home: A structure, transportable in one or more sections which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or when erected on site, is 320 or more square feet and which is built on a permanent chassis, and designed to be used as a dwelling with permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein, and that meets the same architectural and aesthetic standards established in these Zoning Regulations for all dwellings.

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5-103.66. Nonconforming Uses: The use of land or the use or location of a structure that does not conform to the regulations as to use for the district in which it is situated.

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5-103.67. Off-Street Loading Space: Space, located outside of dedicated streets for standing of trucks and for loading and unloading them.

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5-103.68. Off-Street Parking Space: A permanently surfaced area, enclosed or unenclosed, connected by a permanently surfaced driveway to a street or alley to permit ingress and egress located away from space dedicated for street purposes consistent with requirements set forth in Section 5-139.

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5-103.69. Oriel: An angular or curved projection of a house with fenestration, similar to a bay or bow window, and located on an upper floor.

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5-103.70. Outdoor Recreational Facility: Any structure, except pools, devoted primarily to recreational activities, including, but not limited to, tennis courts, handball courts, racquetball courts, basketball courts and trampoline pits. Where any question is presented concerning a particular structure's status as an outdoor recreational facility, the City Administrator shall make the determination as to the structure's status. In so doing, the City Administrator shall consider factors such as the structure's proposed or existing location, surface composition, lighting, fencing, and such other factors which the City Administrator deems proper. In any event, if the structure does not abut the principal building or detached garage, there is a rebuttable presumption that the facility is an outdoor recreational facility; provided that there will be no presumption that a structure is not an outdoor recreational facility if the structure abuts the principal building or detached garage.

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5-103.71. Pedestrian Way: A right-of-way, dedicated to public use, which cuts across a block to facilitate pedestrian access to adjacent streets and properties.

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5-103.72. Planned Non-Rebuild: A situation involving a stipulated condition, as specified by the Applicant in the permit application for Substantial Exterior Demolition, under which the Applicant does not currently plan to rebuild a principal building on the property.

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5-103.73. Plat: A map, plan or layout of a city, township, section or subdivision indicating the location and boundaries of individual properties. Any plat shall be established pursuant to applicable ordinances of the City relating thereto.

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5-103.74. Platted Lot: A lot as shown on plat filed in the Office of the Register of Deeds of Johnson County, Kansas.

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5-103.75. Play Equipment: Swing sets, play houses under 8-feet tall without a foundation, tetherball, basketball goal and other equipment typically used by children; provided, however, that tree houses are excluded from this definition.

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5-103.76. Pool: Any unenclosed accessory structure intended to retain water, including, but not limited to, decorative pools, swimming pools, hot tubs, jacuzzis and whirlpools for setback purposes, the pool includes the coping and any attached walkways or decking.

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5-103.77. Porch: The covered entrance to a building; called a portico if columned and pedimented like a temple front, and called a stoop if uncovered.

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5-103.77.5. Pre-Application Conference. A meeting between a property owner and/or the property owner's architect/builder and the City staff which takes place prior to the filing of an application for a building permit. The purpose of a Pre-Application Conference is to enable staff to discuss the application of the Zoning Regulations and the Design Guidelines adopted by the City Council to the proposed project prior to the property owner making an investment in detailed architectural plans. The property owner will be required to submit a site plan for the project, and may submit other visual aids that will convey or illustrate the project in its conceptual state and its relationship to surrounding properties, including, but not limited to, proposed elevations, models, three-dimensional renderings and photographs of the site and surrounding properties.

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5-103.78. Principal Building: See Building, Principal.

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5-103.79. Public Property: Any property owned by the City in fee simple, including but not limited to, public parks, parklets, parkways, streets, street islands, boulevards, lakes, ponds, sidewalks, courtyards, terraces, common areas, and public buildings.

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5-103.80. Public Right-of-Way: Any land area including surface, overhead or underground, granted by deed or easement, for construction and maintenance according to designed use, such as for drainage and irrigation canals and ditches, electric power, telegraph and telephone lines, gas, oil, water and other pipe lines, highways, and other roadways, including right of portage, sewers, flowage or impoundment of surface water, and tunnels.

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5-103.81. Rebuild or Rebuild Project: The construction of a new principal building

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after Substantial Exterior Demolition of the previous principal building on that same property, or the reconstruction of at least fifty percent (50%) of the total square footage of the existing principal building.

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5-103.82. Repair: Any act which is taken for the purpose of normal maintenance of an existing structure, but which does not in any manner change the use, location, height, size or exterior surface of the structure, but excludes full replacement of any type of structure.

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5-103.83. Residential-Design Manufactured Home: A manufactured home on permanent foundation which has (a) minimum dimensions of twenty-two (22) body feet in width, (b) a pitched roof and (c) siding and roofing materials which are customarily used on site-built homes, and that meets the same architectural and aesthetic standards established in these Zoning Regulations for all dwellings.

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5-103.84. Retaining Wall: A structure typically constructed of stone, brick, concrete, railroad ties, or similar landscaping timbers, generally built to contain a bank of earth or to prevent water from flooding, or any wall that has more than a difference of twenty-four (24) inches between the finished grade on one side of the wall and the finished grade on the other side of the wall and is not higher than six inches, including coping, of the highest graded side shall be deemed to be a retaining wall.

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5-103.85. Reverse Corner Lot: A corner lot adjacent to an interior lot that does not front on the same street as the adjacent interior lot and that has as a side street, the front street of the adjacent interior lot

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5-103.86. Right-of-Way or R/W: See Easement.

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5-103.87. Setback Line: See Building Line.

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5-103.88. Sign: Any words, numerals, announcement, device, declaration, demonstration, display, illustration, or insignia used to advertise or promote any location, residence, candidate, issue, activity, service or interest of any person when the same is placed in

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view of the general public, provided that (a) bumper stickers that are no larger than eighteen (18) inches in length and five (5) inches in width, (b) Flags which are no larger than four (4) feet by six (6) feet, and (c) decorative objects are not considered Signs.

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5-103.89. Sign, Monument: A freestanding sign consisting of a base and a sign face where the width of the base is a minimum of one-half the width of the widest part of the sign face. The base of a monument sign shall be architectural in nature and utilize materials consistent with the design of the building the sign is identifying.

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5-103.90. Sign, Name Plate: A single-faced, non-illuminated wall sign that displays only the name and/or occupation of the person or persons occupying space in a building. Name plate signs may be incorporated in a wall sign.

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5-103.91. Sign, Wall: A sign attached to and erected parallel to and within one foot of the face or wall of a building, including signs painted on or projected on the wall of a building. "Wall sign" shall include signs attached to canopies, awnings, mansard roofs or similar near-vertical architectural elements of a building façade, but which are not part of the building roof. Wall signs shall not contain elements that extend above the top of the wall on which the sign is located.

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5-103.92. Significant Construction Activities: Substantial improvements, including first placement of permanent construction of a principal building on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the principal building. For a substantial improvement or addition to an existing structure, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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5-103.93. Site Maintenance Plan: A plan, to be developed by the Applicant and submitted to the City Administrator for approval, which identifies specific actions necessary to maintain the site to ensure its compliance with the City Code and the Comprehensive Plan principles, and may include such requirements as driveway, sidewalk and hardscape removal,

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trimming and removal of vegetation, planting of vegetation, and overall maintenance of the site to ensure compatibility and consistency with the neighborhood, and to ensure the aesthetic compatibility with the neighborhood.

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5-103.94. Solar Energy System: Any apparatus or structure including any alteration to an existing apparatus or structure designed to collect, transfer or utilize solar energy, including but not limited to panels designed to collect and transfer solar energy into heated water, air or electricity and windows or windowwalls which admit solar rays to obtain direct heat or to obtain heat for storage.

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5-103.95. Stoop: An uncovered platform attached to or abutting the front of the principal building that facilitates entry through a door to the principal building.

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5-103.96. Story: That portion of a building included between the surface of any floor above the finished exterior grade at the front of the building, and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it. A lower story is a basement when the average elevation of the proposed finished exterior grade at the front of the building is above the middle of the interior height of such story. The first story is the lower story and may occur on staggered levels.

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5-103.97. Story, Half: The upper story is a half-story when the main line of the eaves is not above the middle of the interior height of such story. A lower story, used for dwelling, is a half-story when the average elevation of the proposed finished exterior grade at the front of the building is not above the middle of the interior height of such story.

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5-103.98. Street: A right-of-way, dedicated to public use which provides the principal route of access to abutting property for vehicular and pedestrian traffic.

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5-103.99. Street Grade: The officially established elevations of a street.

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5-103.100. Street Improvements: The constructed physical facilities within a street which adapt it for vehicular and pedestrian usage. Street improvements include grading,

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pavement, curbs, gutters, sidewalks, pedestrian ways, storm drainage facilities, permanent street survey monuments, trees, street Signs and other appropriate facilities.

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5-103.101. Street Line: The dividing line between the street and the abutting property as defined by the back of curb. The abutting property may be public or private.

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5-103.102. Street, Numbered: The standard designation established by the uniform street naming system for numbered east-west streets.

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5-103.103. Structural Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any structural change in the roof, but not including extension or enlargement.

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5-103.104. Structure: Anything constructed, erected, or installed which requires location on the ground or attached to something having a location on the ground, including, but not limited to, Buildings, Accessory Structures, Pools, pool equipment, patios, decks, Walkways, Outdoor Recreational Facilities, Fences, Walls, Retaining Walls, driveways, Antennas, Monument Signs, Name Plate Signs, Wall Signs, and any apparatus to be used for the purpose of locating, drilling or establishing a gas or oil well; provided, however, that the term "structure" does not include Art, Play Equipment, signs allowed under the Zoning Regulations, tree wells, plant materials (trees, flowers, shrubs, sod and similar materials) or decorative borders not exceeding one (1) foot above ground level in height.

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5-103.105. Subdivider: A person, firm or corporation undertaking the subdivision or resubdividing of a tract of land or of a parcel of land.

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5-103.106. Subdivision: The division of a tract or parcel of land into two (2) or more lots and/or blocks for the purpose of establishing units of ownership of land. A subdivision may also include the establishment of new streets. A subdivision shall only be established by platting or replatting pursuant to applicable ordinances of the City relating thereto and the subdivision shall become officially established by means of a recorded plat.

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5-103.107. Substantial Construction Matter: Any of the following structures:

- (a) a new principal building;
- (b) an addition of three thousand square feet (3,000 sq. ft.) or more to an existing principal building;
- (c) an addition of which results in at least 50% increase of the footprint or square footage of the overall structure; or
- (d) an Outdoor Recreational Facility or Pool that has a surface area greater than five hundred square feet (500 sq. ft.); provided, however, that the replacement of an existing Facility or Pool within the same footprint as the existing Facility or Pool shall not be a Substantial Construction Matter.

Ord. 1267 09-14-09

5-103.108. Substantial Exterior Demolition: The intentional destruction or tearing down of fifty percent (50%) or more of a principal building, including the removal of debris, grading and filling of holes and pits, and the elimination of physical hazards. The requirements and obligations for Substantial Exterior Demolition are distinct from those for lesser exterior demolition and interior demolition projects, and a separate permit is necessary.

Ord. 1267 09-14-09

5-103.109. Surrounding Structures: All structures located within a five hundred foot (500') radius of the exterior perimeter of the lot upon which the proposed structure is or will be located.

Ord. 1267 09-14-09

5-103.110. Temporary Demolition Fence: A flexible, non-permanent fence to be utilized only during the Substantial Exterior Demolition process.

Ord. 1267 09-14-09

5-103.111. Terrace: The standard designation established by the uniform street naming system for numbered east-west streets located between numbered streets.

Ord. 1267 09-14-09

5-103.112. Truck: The word "truck" shall include tractor and trailer trucks, or any motor vehicle which carries a truck license.

Ord. 1267 09-14-09

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5-103.113. Utility Easement or U/E: See Easement.

Ord. 1267 09-14-09

5-103.114. Variance: A modification or variation of the provisions of this article as applied to a specific piece of property.

Ord. 1267 09-14-09

5-103.115. Vestibule: An outer anteroom or entrance hall that opens into another room, often used as a waiting room, and similar to an enclosed porch.

Ord. 1267 09-14-09

5-103.116. Walkway: An accessory structure, no more than four (4) inches above the ground, the main body of which shall be no wider than five (5) feet (excluding flares which extend outward from the main body to connect or merge into another structure, stairs and required landings) designed to facilitate the movement of pedestrians to or from the principal building or other structures on the property, or to or from adjoining properties; provided that any such accessory structure that effectively serves as or enlarges a deck, patio, or similar structure, or any structure surrounding a pool shall not be considered a walkway.

Ord. 1373 08-12-13

5-103.117. Wall: A structure typically constructed of stone or brick around or by the side of an open space, but not such a structure if it is used as a retaining wall.

Ord. 1267 09-14-09

5-103.118. Watercourse: All of that portion of a river, stream, creek or waterway bounded by definite embankments.

Ord. 1267 09-14-09

5-103.119. Wind Driven Device: Any apparatus or structure which is propelled by or in any manner utilizes the wind for the purpose of producing, collecting or transferring energy of any kind.

Ord. 1267 09-14-09

5-103.120. Window, Bay: An angular projection, cantilevered or with foundation, of a house front filled by fenestration.

Ord. 1267 09-14-09

5-103.121. Window, Bow: A curved projection, cantilevered or with foundation, of a

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house front filled by fenestration.

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5-103.122. Yard, Front: An open space, unoccupied except as otherwise provided in these Zoning Regulations, on the same lot with the principal building, between the wall of the principal building nearest the street on which the lot fronts and the line of that wall extended, the side lines of the lot and the front street line of the lot. The depth of the front yard shall be determined by measuring the distance between the nearest point of the street wall of the principal building and front line of the lot, or that line produced, measured at right angles to the front line of the lot. The front yard of a corner lot consisting of one platted lot shall be adjacent to that street on which the lot has its least dimension, provided that if the City Administrator determines that the corner lot is unique in shape or other characteristic, the City Administrator may determine the front yard of the lot and in so doing shall consider all appropriate factors, including, but not limited to, the manner in which the principal building is located on the lot, the location of the principal building on adjoining lots, and the street address of the lot.

Ord. 1267 09-14-09

5-103.123. Yard, Rear: An open space, unoccupied, except as otherwise provided in these Zoning Regulations, on the same lot with the principal building, between the rear line of that building and that line extended, the side lines of the lot and the rear line of the lot.

Ord. 1267 09-14-09

5-103.124. Yard, Side: An open space, unoccupied except as otherwise provided in these Zoning Regulations, on the same lot with the principal building, situated between that building and the side line of the lot and extended through from the front yard to the rear yard.

Ord. 1373 08-12-13

5-104. Land Use Districts Established. In order to designate districts for the purpose of these Zoning Regulations, the City is hereby divided into the following land use districts:

A. **District R-1.** One-Family and Group Home Dwelling District. Said district includes and is further subdivided into subdistricts R-1(10), R-1(16), R-1(20), R-1(25), R-1(30), R-1(E1), R-1(E2).

B. **District C-1.** Church and Public Building District.

C. **District D-1.** Restricted Golf Club District.

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5-105. Revised Zoning Map. The official map of the City which designates the boundaries of the land use districts and subdistricts shall be and is hereby established as shown on the map entitled "Revised Zoning Map of The City of Mission Hills, Kansas, adopted by Ordinance No. 833" ("Revised Zoning Map"), which map is incorporated herein by reference. Said map shall be signed by the Mayor and shall be kept on file in the office of the City Clerk and shall be marked "Official Copy As Incorporated By Ordinance No. 833". Regardless of the existence of published copies of said map which may from time to time be made or published, the official zoning map, which shall be located in the office of the City Clerk, shall be the final authority as to the current zoning status of land and structures in the City.

Ord. 1267 09-14-09

5-106. Interpretation of Revised Zoning Map. The boundary lines of streets, platted blocks and platted lots are shown on the Revised Zoning Map. When definite distances are not shown on the Revised Zoning Map, the district and subdistrict boundaries are intended to be along existing street, or platted lot lines, or extensions of the same. When the district and subdistrict boundaries follow other lines, definite distances are shown on the map. If the exact location of such lines is not clear, it shall be determined by the City Administrator, due consideration being given to location as indicated by the scale of the Revised Zoning Map. Where, on account of any vacation proceeding, or for any other cause, the streets, pedestrian ways, or other boundaries differ from the streets, pedestrian ways, or other boundaries as shown on the Revised Zoning Map, the Board of Zoning Appeals may apply the district or subdistrict designation on the Revised Zoning Map to the streets, pedestrian ways, or other boundaries in such manner as to conform to the intent and purpose of these Zoning Regulations.

Ord. 1267 09-14-09

5-107. Vacation of Street or Pedestrian Way. When any street or pedestrian way is vacated, the district classification for property contiguous thereto shall automatically be extended to the center line of any such vacated street.

Ord. 1267 09-14-09

5-108. Annexed Territory. All territory which may hereafter be annexed to the City shall automatically be classed as lying and being in subdistrict R-1(E2) until such classification shall have been changed.

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5-109. Specific Regulations. Specific regulations establishing authorized uses and limitations of use for the above-listed use districts are given in Sections 5-112 to 5-126 hereof, inclusive. No buildings or structures shall be erected, moved, altered, enlarged or used in said districts which are arranged, intended or designed for other than one of the authorized uses in the district in which the building or proposed building is located, nor shall any such building exceed the height or area limitation herein established for said district, nor shall the lot area be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed for said district nor shall the density of population be increased in any manner except in conformity with the Comprehensive Plan and with the area regulations established for said district.

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5-110. General Regulations. General regulations which are applicable to all of the above listed use districts are given in the following sections or articles of the Code of Ordinances:

Section 5-127 -	Exceptions.
Section 5-128 -	Nonconforming Uses.
Section 5-129 -	Prohibited Uses and Structures.
Section 5-130 -	Solar Energy Systems.
Section 5-131 -	Antennas.
Section 5-132 -	Exceptions and Additional Regulations.
Sections 5-133-138 -	Fences, Walls and Retaining Walls.
Section 5-139 -	Off-Street Parking.
Chapter V, Article 14 -	Signs.
Chapter V, Article 10 -	Building Permits.
Sections 5-140 - 150 -	Architectural Review Board.

Ord. 1267 09-14-09

5-111. Parking Code. References to "Parking Code" refer to requirements established in Section 5-139, "Off-Street Parking".

Ord. 1267 09-14-09

5-112. District R-1. One-Family Dwelling District Use Regulations; Purpose. District R-1 is composed solely of areas developed for one-family and group home dwellings and areas of open land that might reasonably be developed similarly.

Ord. 1267 09-14-09

5-113. District R-1. One-Family Dwelling District Use Regulations; Principal Uses. The only principal uses of land which are permitted in District R-1 are the following:

- A. One-family dwellings.

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- B. Group home dwellings.
- C. Publicly owned parks and recreational areas.
- D. Parking, as a related use, is defined in Section 5-139.

Ord. 1267 09-14-09

5-114. District R-1. One-Family Dwelling District Use Regulations; Accessory Uses.

A. **Generally.** Accessory uses customarily incident to the principal use for which property in District R-1 is being used are also permitted in District R-1.

B. Home Occupations.

1. **Purpose.** Home occupations that conform to the standards set forth herein shall be permitted. The standards for home occupations are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood, and to clearly establish such home occupation as secondary and incidental in relation to the residential use of the property.
2. **Performance Standards.** All home occupations must be conducted in compliance with the following standards and limitations.
 - (a) The primary use of the dwelling unit shall remain residential. The home occupation shall be clearly incidental and subordinate to the primary residential use of the dwelling.
 - (b) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of the home occupation. Exterior signage for the home occupation is prohibited. No outside storage of equipment, machinery, materials, vehicles or trailers used in the home occupation shall be permitted on the property or on the street near the property.
 - (c) No vehicular traffic or parking of vehicles shall be permitted that is greater than normal in the adjacent residential area. Deliveries of materials to and from the premises in conjunction with the home occupation shall not require the use of vehicles other than parcel post, express delivery or similar parcel service vehicles.
 - (d) The use and/or storage of equipment or materials that would exclude the structure from Type R3 residential occupancy, according to Section 310.1 of the 2003 edition of the International Building Code, is prohibited.

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Further, the use of electrical or mechanical equipment that would result in any electrical disturbance or interference of any sort is also prohibited.

(e) Noise, vibration, smoke, odors, heat or glare resulting from the home occupation, which would exceed that normally produced by a single family residence is prohibited.

(f) Storage of toxic materials or toxic chemicals for resale or use in the home occupation is prohibited.

(g) No permitted home occupation shall interfere with the reasonable use and enjoyment of nearby residential properties or become a nuisance.

3. **Penalty.** It shall be unlawful for any person to operate a home occupation except in accordance with the provisions of this subsection B. Violations shall be subject to a penalty as set forth in Section 5-167.

Ord. 1354 10-08-12

5-115. District R-1. One-Family Dwelling District Use Regulations; Detached Accessory Buildings and Accessory Structures. Detached accessory buildings and accessory structures are permitted in District R-1 and include, but are not limited to, the following:

- A. Noncommercial greenhouses and garden storage buildings.
- B. Private garages and driveways for the use of the occupants of the dwelling located on the lot on which such garages and driveways are located.
- C. Patios, decks, stoops and similar structures, provided that if a patio, deck, stoop or similar structure is located in the minimum side or rear yard, the floor and side walls or fencing of any such patio, deck, stoop or similar structure shall not exceed the height requirements for fences and walls and shall be constructed in accordance with Section 5-135.
- D. Decorative pools in all R(1) districts having a depth of less than two (2) feet and all other pools, other than swimming pools regulated by Section 5-120.H, for which the following conditions are met:
 - 1. The pool must be located behind the front building line.
 - 2. If located on a corner lot, the pool shall not be less than fifteen (15) feet from a side street line and at least twenty (20) feet from a principal building on an adjoining lot.
 - 3. If located in the rear yard, the pool shall not be less than ten (10) feet from the rear or side lot line.

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4. If located in the side yard, the pool shall not be less than sixty (60) feet from the front street line, and not less than fifteen (15) feet from the side lot line.
5. If the pool is a hot tub, jacuzzi or whirlpool, it shall be covered with a rigid locked cover when the hot tub, jacuzzi or whirlpool is not in use, provided that no such cover shall be required if such pool is enclosed in accordance with Section 5-115.D.5.

E. Swimming pools having a depth greater than two (2) feet. The area in which the swimming pool is located shall be entirely enclosed and separated from adjoining property by a protective fence or other permanent structure at least four (4) feet in height and which otherwise meets the requirements of Appendix G of the 2003 International Residential Code, provided that for all pools operated by clubs, enclosures must meet the requirements of the 2003 International Building Code, Section 3109.3. The protective enclosure described herein shall be provided with gates equipped with locks which meet the requirements set forth in the 2003 International Residential Code Appendix G, which shall be locked when the pool is not attended. Swimming pools may include covers which enable the pool to be used when covered.

F. Outdoor Recreational Facilities for which the following conditions are met:

1. An Outdoor Recreational Facility must be located behind the front building line and not less than twenty (20) feet from any rear or side lot line and, if it is located in the side yard, the Outdoor Recreational Facility shall not be less than sixty (60) feet from the front street line.
2. Each Outdoor Recreational Facility must also conform to such additional requirements and conditions, including, but not limited to, the height, placement and intensity of lighting, and the size and appearance of any walls or fences, as the ARB, after reviewing the application for a building permit, may deem necessary to prevent such facility from adversely affecting the value or enjoyment of neighboring property.

G. Temporary buildings, such as real estate offices, contractors' sheds and buildings of like character, will be permitted during construction of buildings or sale of property but not to exceed one (1) year, upon approval of the City Administrator.

H. Solar Energy Systems.

I. Antennas.

J. Fences and Walls and Retaining Walls.

K. Walkways.

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Ord. 1360 01-14-13

5-116. District R-1. One-Family Dwelling District Use Regulations; Height, Yard and Area Regulations in District R-1; Purpose. In District R-1, which is divided into subdistricts R-1(10), R-1(16), R-1(20), R-1(25), R-1(30), R-1(E1) and R-1(E2) for the requirements with subdistrict-wide applicability, and which is further classified by Lot Size (LS) for parcel-specific requirements, the height of buildings, the minimum dimensions of yards, and the minimum lot area per family permitted on any lot shall be as hereinafter provided.

Ord. 1267 09-14-09

5-117. District R-1. One-Family Dwelling District Use Regulations; Height. In District R-1, buildings shall not exceed two and one-half (2½) stories, exclusive of basements, and buildings and structures shall not exceed thirty-five (35) feet in height, measured at the front of the building or structure from the average elevation of the exterior finished grade to highest point of the roof, as determined by the City prior to issuance of either a demolition or building permit.

Ord. 1267 09-14-09

5-118. District R-1. One-Family Dwelling District Use Regulations; Lot Size (LS). Parcels with total area equivalent to the following ranges shall be classified accordingly for certain minimum yard and setback requirements established in this section.

- A. LS-1: actual total area of lot is less than 16,000 square feet.
- B. LS-2: actual total area of lot is between 16,000 square feet and 19,999 square feet.
- C. LS-3: actual total area of lot is between 20,000 square feet and 24,999 square feet.
- D. LS-4: actual total area of lot is between 25,000 square feet and 29,999 square feet.
- E. LS-5: actual total area of lot is between 30,000 square feet and 43,559 square feet (just less than one acre).
- F. LS-6: actual total area of lot is between 43,560 square feet (one acre) and 87,119 square feet (just less than two acres).
- G. LS-7: actual total area of lot is greater than 87,120 square feet (two acres).

Ord. 1267 09-14-09

5-119. District R-1. One-Family Dwelling District Use Regulations; Yards.

Required front yards in District R-1 shall be as follows:

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A. For LS-1 located in subdistrict R-1(10), each front yard shall have a minimum depth of thirty (30) feet; for LS-1 located in a subdistrict other than R-1(10), the front yard requirements established in Section 5-119.B shall be applicable.

B. For LS-2, LS-3, LS-4, LS-5, LS-6 and LS-7, each front yard shall have a minimum front yard depth of the average front yard depth of the lots fronting on the same street between two intersecting streets (excluding reverse corner lots); provided, however, that if the front yard depth of the lot or lots which immediately adjoin and front on the same street as the lot in question is greater than said average, the minimum front yard depth shall be the same as the front yard depth of the adjoining lot with the least front yard depth.

C. No detached accessory building nor any accessory structure, except driveways, decorative objects, retaining walls, flagpoles, and walkways shall be located in a front yard.

Ord. 1335 01-09-12

5-120. District R-1. One-Family Dwelling District Use Regulations; Required Side Yards.

A. There shall be a side yard on each side of the dwelling, the total width of which side yards shall not be less than twenty-five percent (25%) of the width of the lot. The mean width of the lot shall be determined in the following manner. For each side yard, the point of the dwelling closest to the side line of the lot shall be determined. For each such point, a line parallel to the front yard line shall be drawn through the point and extended to both side lot lines. For any side yard where all points on that side of the dwelling are equal distance from the side line of the lot, the parallel line for that side yard shall be identical to the other parallel line. The average of the width of the two lines shall constitute the width of the lot for purposes of this section.

B. For LS-1, LS-2, LS-3 and LS-4, no side yard shall be less than ten (10) feet and there shall be not less than twenty (20) feet distance maintained between a dwelling on said lot and a dwelling on an adjoining lot.

C. For LS-5, LS-6 and LS-7, no side yard shall be less than ten (10) percent of the median mean width of the lot, and there shall be not less than twenty (20) feet distance maintained between a dwelling on said lot and a dwelling on an adjoining lot.

D. On a corner lot where the adjacent interior lot fronts on the same street as the corner lot and the corner lot is not a reverse corner lot, there shall be a side yard on the side street side of the corner lot of not less than fifteen (15) feet.

E. On a reverse corner lot, there shall be a side yard on the side street side of the reverse corner lot not less than one-half ($\frac{1}{2}$) of the depth of the front yard of the adjacent interior lot.

F. Detached accessory buildings may be located in the side yards; provided, that if a

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detached accessory building is located in a side yard, it shall be not less than sixty (60) feet from the front line and at least twenty (20) feet from the side line provided that the aggregate area occupied by all detached accessory buildings in existing side yards shall be no more than twenty percent (20%) of the total minimum side yard area for the entire lot.

G. Accessory structures, other than outdoor recreational facilities and pools having a depth greater than two (2) feet, may be located in a side yard; provided that no accessory structure or other structure, except a driveway, a small dish antenna, a walkway, a fence or a wall or retaining wall shall be located closer than ten (10) feet from either side lot line.

H. Outdoor recreational facilities and swimming pools having a depth greater than two (2) feet may be located in a side yard, provided that the outdoor recreational facility or swimming pool is located not less than twenty (20) feet from any rear or side lot line, and not less than sixty (60) feet from the front lot line.

I. Play equipment at least ten (10) feet from side property lines.

Ord. 1335 01-09-12

5-121. District R-1. One-Family Dwelling District Use Regulations; Required Rear Yards.

A. In District R-1, the rear yards shall have a minimum depth of twenty percent (20%) of the depth of the lot at any given point.

B. Detached accessory buildings may be located in the rear yard; provided that no such building shall be located closer than ten (10) feet from either side or rear lot line and provided further, that the aggregate area occupied by all detached accessory buildings in the existing rear yard shall be no more than twenty percent (20%) of the total minimum rear yard area.

C. Accessory structures other than outdoor recreational facilities may be located in the rear yard, provided that no accessory structure or other structure, except a driveway, a small dish antenna, a walkway, a fence or a wall or retaining wall shall be located closer than ten (10) feet from either side or rear lot line.

D. Outdoor recreational facilities may be located in the rear yard, provided that the outdoor recreational facility is located not less than twenty (20) feet from any rear or side lot line.

E. Play equipment at least ten (10) feet from rear property line.

Ord. 1373 08-12-13

5-122. District R-1. One-Family Dwelling District Use Regulations; Minimum Dwelling Size. In District R-1, the minimum dwelling size shall correspond to actual lot size as

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follows:

A. For LS-1, no dwelling shall hereafter be erected with less than the following first floor area, exclusive of open or screened porches, or garages:

1. For 1-story dwelling, one thousand seven hundred (1,700) square feet.
2. For 1½-story dwelling, one thousand two hundred (1,200) square feet.
3. For 2-story dwelling, nine hundred (900) square feet.

B. For LS-2, LS-3, LS-4, LS-5, LS-6 and LS-7, no dwelling shall hereafter be erected with less than the following first floor area, exclusive of open or screened porches, or garages:

1. For 1-story dwelling, two thousand four hundred (2,400) square feet.
2. For 1½-story dwelling, one thousand four hundred fifty (1,450) square feet.
3. For 2-story dwelling, one thousand two hundred fifty (1,250) square feet.

Ord. 1267 09-14-09

5-123. District R-1. One-Family Dwelling District Use Regulations; Maximum Lot Coverage of Principal Building and Detached Accessory Buildings.

A. The maximum lot area covered by the building footprint of the Principal Building (see Section 5-103.19.) and all Detached Accessory Buildings (see Section 5-103.18.) on a lot shall be determined by application of the following formula: $LCA = 5.29471 (ALSF)^{0.695}$ [Lot Coverage Area equals 5.29471 multiplied by the Actual Lot Square Footage to the power of 0.695].

B. The building footprint of the Principal Building and all detached accessory buildings on a lot shall be determined from the most current Improvement to Land Area Ratio Statistics as developed by the Johnson County Appraiser's Office; provided that, the City Administrator may determine the building footprint from any other reliable source on a case by case basis.

C. The maximum percentages set forth in Section 5-123.A shall be, as stated, the maximum percentage of lot coverage of the footprint of Principal Buildings and Detached Accessory Buildings on a lot. The fact that a building footprint on a lot is equal to or less than the maximum percentage of lot coverage established for the respective Lot Size shall not create a presumption that the lot coverage of the building footprint proposed in an application being considered by the Architectural Review Board is appropriate for that particular lot. The Architectural Review Board shall consider the proposed lot coverage shown on plans or

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specifications submitted in connection with an application, and in considering the standards set forth in Section 5-146 and the factors in Section 5-147, may determine that the proposed lot coverage, though equal to or less than the applicable maximum lot coverage percentage set forth in Section 5-123.A, is not appropriate at the proposed location, in light of all the factors to be examined. If the Architectural Review Board so finds, it may condition its approval on a lot coverage percent that is less than the maximum established for the respective Lot Size.

Ord. 1292 07-12-10

5-124. District R-1. One-Family Dwelling District Use Regulations; Minimum Lot Width, Depth and Area for Subdistricts.

A. In subdistrict R-1(10), the minimum net lot area shall be 10,000 square feet and the minimum mean width of the lot shall be eighty (80) feet or the width of the platted lot which constitutes the major portion of said lot, whichever is the smaller, and the minimum mean depth of the lot shall be one hundred twenty (120) feet.

B. In subdistrict R-1(16), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of sixteen thousand (16,000) square feet, whichever is the greater, and the minimum mean width of the lot shall be one hundred (100) feet and the minimum mean depth of the lot shall be one hundred twenty (120) feet.

C. In subdistrict R-1(20), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of twenty thousand (20,000) square feet, whichever is the greater, and the minimum mean width of the lot shall be one hundred (100) feet and the minimum mean depth of the lot shall be one hundred sixty (160) feet.

D. In subdistrict R-1(25), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of twenty-five thousand (25,000) square feet, whichever is the greater, and the minimum mean width of the lot shall be one hundred ten (110) feet and the minimum mean depth of the lot shall be one hundred eighty (180) feet.

E. In subdistrict R-1(30), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of thirty thousand (30,000) square feet, whichever is the greater, and the minimum mean width of the lot shall be one hundred twenty (120) feet and the minimum mean depth of the lot shall be two hundred (200) feet.

F. In subdistrict R-1(E1), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of one (1) acre, whichever is the greater, and the minimum mean width of the lot shall be one hundred fifty (150) feet and the minimum mean depth of the lot shall be two hundred fifty (250) feet.

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G. In subdistrict R-1(E2), the minimum lot area shall be the total area of the platted lot which constitutes the major portion of said lot or a minimum net lot area of two (2) acres, whichever is the greater and the minimum mean width of the lot shall be two hundred (200) feet and the minimum mean depth of the lot shall be two hundred seventy-five (275) feet.

Ord. 1267 09-14-09

5-125. District C-1. Church and Public Building Use Regulations.

A. **Purpose.** District C-1 is composed solely of areas developed for use by churches and public buildings.

B. **Principal Uses.** The principal uses of land which are permitted in District C-1, including the appropriate ARB-approved parking, are the following:

1. Churches and synagogues.
2. Police stations.
3. Fire stations.
4. Municipal offices.
5. Other governmental uses.
6. Any principal use permitted in District R-1. When land located in District C-1 is devoted to an R-1 use, such use must comply in all respects with the regulations contained in these Zoning Regulations which would be applicable in the event such land were located in District R-1.

C. **Accessory Uses.** Accessory uses customarily incident to the principal use for which property in District C-1 is being used are also permitted in District C-1.

D. **Height, Width, Yard and Area Regulations.** In District C-1, the height of buildings, minimum dimensions of yards, minimum lot area, and location of accessory uses shall be determined by the ARB.

Ord. 1267 09-14-09

5-126. District D-1. Golf Club District Use Regulations.

A. **Purpose.** District D-1 is composed solely of areas developed for use as golf club.

B. **Principal Use.** The only principal uses of land which are permitted in District D-1 are the following:

1. **Golf club.**

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2. **Clubhouse.** A clubhouse may include facilities for service of food and beverages, recreational facilities and facilities for the sale of items incident to use of the golf club facilities, or these may be in a separate building from the clubhouse.

C. **Accessory Uses.** Accessory uses customarily incident to the operation of a golf club including, but not limited to, swimming pools, tennis facilities, work out facilities, and parking are permitted in this district when conducted on a tract of land principally used as a private golf course.

D. **Detached Accessory Buildings and Accessory Structures.** Detached accessory buildings and accessory structures customarily incident to the operation of a golf club are permissible in this district when located on a tract of land principally used as a private golf course. The detached accessory buildings and accessory structures which are permissible in District D-1 include, but are not limited to, the following:

1. Parking facilities.
2. Swimming pools.
3. Outdoor recreational facilities.
4. Indoor fitness facilities.
5. Buildings for the storage of equipment necessary to utilize or maintain the golf course, clubhouse and accessory uses.

E. **Height, Setback and other Regulations.** In District D-1, the height of buildings and the minimum setback from property lines shall be as follows:

1. **Height.** Buildings shall not exceed two and one-half (2½) stories, exclusive of basements, and buildings and structures shall not exceed thirty-five (35) feet in height, measured at the front of the building or structure from the average elevation of the exterior finished grade, as determined by the City prior to issuance of either a demolition or building permit.
2. **Setback.** No portion of any building, structure, or accessory use, except driveways, shall be located closer than thirty (30) feet to any front, side or rear property line.
3. **Fencing for Pools.** All country club pools must be fenced in accordance with the 2003 International Building Code, Section 3109.3.

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5-127. Exceptions.

A. **Requirements.** A special use may be located in any district if an exception permitting such use is granted by the Board. Said exception shall specify the applicable parking code.

B. **Special Uses.** Special uses which may be authorized under this section are:

1. Temporary off-street parking facilities in District R-1 as provided in Section 5-139.B.2.
2. Uses necessary or customarily incident to the operation of any power (electrical, gas, or other), communication, transportation, water, or sewage system which is operated for the benefit of the public, or any other public utility system.
3. Extensions of an existing or proposed use into a more restricted district under such conditions as will safeguard the character of the more restricted district.

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5-128. Nonconforming Uses.

A. **Permissible Nonconforming Uses.** Any nonconforming use of any building or land which was lawful under the Zoning Regulations in effect at the time of the passage of this Section of these Zoning Regulations, although such use does not conform with these Zoning Regulations, shall be allowed to continue.

B. **Limitations.** Permissible nonconforming uses are subject to the following limitations:

1. When a nonconforming use has been discontinued for six (6) months or more, it shall not be re-established except as permitted in Section 5-128.D.
2. A permissible nonconforming use, if changed to a conforming use, may not be changed back to a permissible nonconforming use.

C. **Repairs to a Structure.** Repairs may be made to any part of a structure even if the structure or the lot upon which it is located does not conform to the use regulations of these Zoning Regulations.

D. **Alterations to a Structure.** Alterations may be made to any structure provided that the alteration conforms to these Zoning Regulations, even though such structure or the lot upon which such structure is located does not conform to these Zoning Regulations.

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E. **Completion and Restoration of Structures.**

1. **Effect of New Zoning Regulations on Issued Building Permit.** Nothing in these Zoning Regulations shall require any change in the plans, construction or designated use of a structure for which a building permit has been heretofore issued, and plans for which are on file at the City Hall at the time of the passage of these Zoning Regulations and the construction of which in either case shall have been diligently prosecuted within six (6) months of the date of such permit, and the ground story framework of which including the second tier of beams shall have been completed according to such plans as filed within one (1) year from the date of the passage of these Zoning Regulations.
2. **Restoration of Nonconforming Structure Destroyed Not More Than Fifty Percent (50%).** Nothing in these Zoning Regulations shall prevent the restoration within six (6) months of a nonconforming structure destroyed to the extent of not more than fifty percent (50%) of its fair market value by fire, explosion, or act of God, or the public enemy, provided that when such restoration becomes involved in litigation, which was filed in good faith and diligently prosecuted, then the time required for such litigation shall not be counted as a part of the six (6) months allowed for reconstruction, and nothing in these Zoning Regulations shall be taken to prevent the continued occupancy or use of such structure or part thereof which existed at the time of such partial destruction, but any structure so damaged more than fifty percent (50%) of its fair market value may not be rebuilt, or used unless it is made to conform to all regulations for building in the district in which it is located.
3. **Rebuilding or Restoration When Lot Does Not Conform to Width, Depth and Area Requirements.** Nothing contained in these Zoning Regulations shall prevent the complete rebuilding or restoration of an existing structure on a lot which does not conform to the width, depth and area requirements of these Zoning Regulations, if at the time of passage of this Section of these Zoning Regulations, such structure was located on such lot; provided, however, that such rebuilt or restored structure shall otherwise comply with these Zoning Regulations. The provisions of this paragraph shall not permit the restoration or rebuilding of an existing structure in the event the lot on which such structure is to be located did not, at the time of a voluntary transfer of a portion of such lot or as a result of such transfer, meet the minimum width, depth and area requirements of the Zoning Regulations which were in effect at that time of such transfer, unless such transfer was approved by the Board of Zoning Appeals.

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4. **Rebuilding or Restoration of Buildings When Building Does Not Conform to 35 Foot Height Limitation.** If any building is destroyed by more than fifty percent (50%) of its fair market value by fire, explosion or act of God, or the public enemy, nothing contained in these Zoning Regulations shall prevent the rebuilding or restoration of such a building, at its height existing immediately prior to such destruction; provided that:
 - (a) the burden of establishing the height of such a building prior to such destruction shall be upon the owner of the property;
 - (b) no part of the roof of such rebuilt or restored building may be any higher than its height immediately prior to its destruction; and
 - (c) such rebuilt or restored building shall otherwise comply with these Zoning Regulations.
5. **Rebuilding or Restoration of Principal Buildings and Detached Accessory Buildings When Buildings Do Not Conform to Maximum Lot Coverage Requirements.** If any building is destroyed by more than fifty percent (50%) of its fair market value by fire, explosion or act of God, or the public enemy, nothing contained in these Zoning Regulations shall prevent the rebuilding or restoration of that building using the same building footprint existing immediately prior to the destruction; provided that:
 - (a) the burden of establishing the location and size of the building footprint of that building prior to the destruction shall be upon the owner of the property;
 - (b) no part of the building footprint of the rebuilt or restored building may be any larger or at a different location than the building footprint of the building immediately prior to the building's destruction; and
 - (c) the rebuilt or restored building shall otherwise comply with these Zoning Regulations.

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5-129. Prohibited Uses and Structures.

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A. No temporary or uncompleted building, nor any automotive equipment, trailer, garage or appurtenances incident to a family dwelling, shall be erected, maintained or used for residence purposes, provided, where the exterior and more than fifty percent (50%) of the interior of a permanent residence has been completed at the time of adoption of this Section, this regulation shall not apply.

B. No temporary or outwardly incomplete building or structure, no open excavation for a basement or foundation, and no building or structure so damaged as to become unfit for use or habitation shall be permitted, maintained or remain in such condition for more than six (6) months, except by special permission of the Board.

C. No building material, construction equipment, machinery or refuse shall be stored, maintained or kept in the open upon any lot, tract or parcel other than in such districts as permitted in these Zoning Regulations, except during actual construction operations upon said premises or related premises, provided the Board may waive said requirement in unusual cases for a limited time.

D. Driveways which serve a lot other than the one upon which the driveway is located.

E. No portion of a yard shall be used as a driveway or for parking unless said portion is paved with concrete, asphalt or similar substance. Graveled driveways shall not be allowed.

F. No wind driven device shall be erected, constructed, reconstructed or altered upon any lot, tract, parcel, structure or building in any district in the City.

G. No structure shall be erected, constructed, reconstructed, moved, demolished, destroyed or altered if such act would cause the surface drainage to change in a manner which would adversely affect surrounding properties.

H. No structure shall be located in conflict with any public utility easement or public right-of-way; provided that a structure may be so located if the holder of the easement consents to such location, recording such consent in the Office of the Register of Deeds in and for Johnson County, Kansas.

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5-130. Solar Energy Systems.

A. **Purpose.** To establish specific regulations governing the use of solar energy systems within the various districts.

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B. **Compatibility of Solar Energy System.** In considering all plans and specifications submitted in connection with a building permit application that includes the construction of a Solar Energy System, the ARB shall not approve such plans and specifications as to the Solar Energy System unless it finds that the requirements set forth in Section 5-146. exist and in considering such findings shall apply the following standards:

1. All solar energy systems with the exception of detached greenhouses shall be incorporated into a building (which may be either a principal or accessory building) and shall be integrated into the basic form and main structure of such building. Any panel or apparatus which is used to receive, collect or transfer solar energy, shall be mounted on the roof of a building and such panels or apparatus shall be integrated into the roof either directly mounted against the roof or integrated into the roof so that it forms a part of the roof itself. Mounting arrangements which allow such panels or apparatus to project above the roof line, such as "stand-off" or "rack" mounting arrangements shall not be allowed. No such panels or apparatus shall be free standing or mounted on the ground. Nothing herein shall apply to windows or windowwalls.
2. All mechanical piping, electrical conduits, motors and similar items which comprise a solar energy system shall be concealed.
3. All parts of any solar energy system shall be in general conformity with the building to which the system is attached.
4. Other relevant standards which the ARB applies in considering an application for a building permit shall apply to solar energy systems.

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5-131. Antennas.

A. **Purpose.** To establish specific regulations governing the use of antennas within the various districts that have a reasonable and clearly defined health, safety or aesthetic objective and that do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment. The provisions of these regulations governing antenna are based on the following legislative intent and determinations.

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1. **Safeguarding the Unique and Historic Beauty of the City of Mission Hills and the Principles of its Comprehensive Plan.** The City of Mission Hills is a uniquely beautiful and historic residential community. Created in the early 1900's, the City was designed as the archetype of the City Beautiful Movement and became nationally and internationally renowned as the "ideal garden suburb." The City retains its striking beauty and charm today as reflected in the high property values which the homes and estates both command.

Unlike other developments which graded off streets and alleys in rectilinear fashion without regard for topography, or the adaptability of home sites to the surrounding area and leveled hilltops or filled in valleys and cut down trees in the way, Mission Hills preserved the picturesque slopes, natural vegetation and stone-laden brooks that meander through the City. The streets are curvilinear and wind their way around the vast and diverse estates and homes, "more like country lanes." Golf courses, parks, open spaces and boulevards reinforce the pastoral and garden character of the City. Mission Hills has no commercial district and only one church and three country clubs. The City permits only single family homes. Punctuated throughout Mission Hills are cultural and aesthetic artifacts, statuary, fountains, and monuments.

Subsequent generations preserved the beauty and integrity of Mission Hills through the adoption of the City's Comprehensive Plan and stringent Zoning Regulations. In this way, the sense of an enclave away from the surrounding urban metropolis is preserved.

2. **Potential Safety Hazard Posed by Antenna.** A Large Dish Antenna located with its highest point more than twelve (12) feet above the ground level and Large Standard Antenna located with its highest point more than fifteen (15) feet above the ground level can potentially be a safety hazard to persons and property, especially in severe weather conditions. Severe weather conditions include, but are not limited to, thunderstorms with accompanying high winds, tornadoes, ice accumulation, and flooding, and are characteristic of local weather conditions. The greater the height of the Large Standard or Large Dish Antenna, the greater the risk to persons and property. For this reason, a Large Dish Antenna located with its highest point more than twelve (12) feet above the ground level and a Large Standard Antenna located with its highest point more than fifteen (15) feet above the ground level should be subject to more stringent regulation and review to minimize the safety threat to persons and property.

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3. **Visual Blight of Antenna.** Both Large and Small Standard and Dish Antenna can be a visual blight on the City as a result of an antenna's location, size, design and color. Requiring both Large and Small Standard and Dish Antenna to be located on a property in a manner that minimizes the negative impact of the antenna causes little or no cost to the user of such an antenna, provided that such location does allow the antenna to receive or transmit its intended signal. The ARB can appropriately regulate the location of all antenna under the provisions of Section 5-140. The larger any antenna is, the greater the visual blight on the neighborhood. For this reason, Large Standard Antenna and Large Dish Antenna should be subject to more stringent screening regulations than Small Standard or Dish Antenna to lessen the negative aesthetic impact of these larger antenna. In addition, the color and mounting of all antenna should be in conformity with the color, style and design of surrounding structures.
4. **Property Value Concern.** The larger a Standard or Dish Antenna are, the more likely the adverse effect on the aesthetic quality of the City, with a resulting depreciation of property values. This potential adverse effect is particularly acute in Mission Hills given the unique and historic character of the City which the City makes a strong effort to enhance through other land use regulations.
5. **Findings as to Large Antenna.** After analyzing health, safety and aesthetic issues related to Standard and Dish Antenna, the City finds that Small Standard and Dish Antenna can be adequately regulated under the Zoning Regulations that are applicable to all structures, including the approval of the ARB in accordance with the provisions of Section 5-143. The City further finds that Large Standard and Large Dish Antenna should be subject to additional regulation by the ARB as set forth in Section 5-131.D.
6. **Reasonable Regulation.** Because the size of an antenna and the nature and character of the property on which an antenna will be located will vary greatly throughout the City, the ARB is charged with evaluating each antenna on a case by case basis when applying the applicable provisions of Sections 5-143 through 149 and, when appropriate, the provisions of Section 5-131.D. implementing all applicable Zoning Regulations, the ARB should not impose costs on the user of such an antenna that are excessive in light of the purchase and installation cost of the equipment.

B. **Antenna, Small Standard.** Small Standard Antennas are permitted in the various districts of the City provided that any such antenna complies with all applicable Zoning Regulations.

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C. **Antenna, Small Dish.** Small Dish Antennas are permitted in the various districts of the City provided that any such antenna complies with all applicable Zoning Regulations.

D. **Antenna, Large Standard and Dish.** Large Standard and Large Dish Antennas are permitted in the various districts of the City provided that any such Large Antenna complies with all applicable Zoning Regulations and provided further that the ARB shall require that such Large Antenna shall be located and adequately screened in compliance with all applicable Zoning Regulations and in a manner that is in general conformity with the style and design of surrounding structures and in a manner and to the extent practical that prevents the antenna from being observed from any street or from surrounding properties. In addition, a Large Dish Antenna shall not be allowed more than twelve (12) feet above ground level at its highest point and Large Standard Antenna shall not be allowed more than fifteen (15) feet above ground level at its highest point. Notwithstanding the foregoing requirements, upon application to the ARB, the ARB shall to the extent necessary waive the location and screening requirement that prevents the antenna from being observed from the street or surrounding properties and the height limitation requirement if the ARB determines that:

1. Such height, location or screening requirement prevents the Large Dish Antenna or Large Standard Antenna from receiving or transmitting signals;
2. Such location or screening requirement imposes costs on the user of such antenna that are excessive in light of the purchase and installation cost of the equipment; or
3. The size or height of such antenna is in general conformity with the style and design of surrounding structures and does not under the circumstances present a safety concern or adversely affect the value of surrounding properties.

E. **Regulations Applicable to All Antenna:** The color and mounting of all Large and Small Standard or Dish Antenna shall be in general conformity with the color, style and design of surrounding structures.

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5-132. Exceptions and Additional Regulations. The regulations and requirements as to height of buildings and area of lots which may be occupied by buildings, front yards, side yards, rear yards and other regulations and requirements in the foregoing sections of these Zoning Regulations shall be subject to the following exceptions and additional regulations:

A. **Height.** Buildings and structures in District D-1 may be increased in height not exceeding ten (10) feet in addition to the pertinent limitation established by these Zoning Regulations provided that two (2) side yards of not less than thirty-five (35) feet in width, each, are provided. Buildings and structures in R-1 that are at a height greater than allowed under

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these Zoning Regulations, were in existence on or before July 17, 1998, and have two side yards of not less than thirty-five feet (35') in width, each, may have additions added to them at a height equal to or less than the building or structure to which the addition is added; provided that such additions otherwise conform to these Zoning Regulations.

B. **Yards.** The yard requirements in District R-1 as set forth in Sections 5-119 through 121 are subject to the following exceptions:

1. **Platted Setback Lines.** Where a plat, which has been approved by the City, has been filed for record showing a setback line which otherwise complies with the requirements of these Zoning Regulations, yet is less than the established setback for the block as provided in these Zoning Regulations, such platted setback line shall apply.
2. **Official Street Line.** Where an official line has been established for future widening or opening of a street upon which a lot abuts, then the depth or width of a yard shall be measured from such official line to the nearest line of the building.
3. **Certain Portions of Buildings.** Portions of buildings may project into required yards as follows:
 - (a) Bay, bow, oriel, dormer or other projecting windows and stairway landings, other than full two (2) or more story windows and landings may project into required yards not to exceed three (3) feet.
 - (b) Miscellaneous architectural features, including eaves, cornices, sills, belt course, spoutings, chimneys, brackets, pilasters, grill work, trellises and similar projections for purely ornamental purposes may project into required yards not to exceed four (4) feet, provided that in no event shall the projections permitted in this subparagraph project into required side yards a distance greater than one-half (½) the required minimum width of the side yard.
 - (c) Any vestibule, not more than one (1) story in height, may project into required yards not more than three (3) feet, provided that in no event shall the projections permitted in this subparagraph project into required side yards a distance greater than one-half (½) the required minimum width of the side yard.
 - (d) A stoop/porch may project into the required front yard, provided that the area of the stoop/porch does not exceed sixty (60) square feet, and that the height of the stoop/porch, as measured from any

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adjacent walkway or driveway, does not exceed two (2) feet. Steps which are reasonably required to provide access to the stoop/porch may project such additional distance into the yard as necessary to meet their purpose. A railing designed to assist in the negotiation of the steps may be incorporated into the stoop/porch and steps.

- (e) An unenclosed covering for a stoop/porch may project into the required front yard not to exceed ten (10) feet, and the total area of such covering may not exceed eighty (80) square feet.
 - (f) Walkways that connect stoops and porches to driveways may be constructed to a width of up to eight (8) feet for a distance of no more than six (6) lineal feet.
4. **Yard Lights.** Yard lights as further described below may be placed in the front yard provided:
- (a) The light must have a single, non-decorative, pole no wider than four (4) inches in diameter and no taller than six (6) feet.
 - (b) The light may have only one single decorative head, no taller than eighteen (18) inches including the finial.
 - (c) The light must serve a purpose such as lighting a walkway or driveway.
 - (d) Lights on walls that were previously permitted by the City may be replaced in the same location with a light of the same style and size.

C. **Existing Utility Structures.** In all use districts, existing public utility poles, lines, transformers, terminals and other appurtenances normally incident to the conduct of a public utility may be replaced, provided that the replacement structure is installed in the same location as such existing structure and is of the same type and dimension. Such a replacement structure shall be exempt from review for approval or disapproval by the ARB; provided that no such structure may be replaced without first obtaining a building permit in accordance with these Zoning Regulations.

D. **New Utility Structures.** In all use districts, new public utility poles, lines, transformers, terminals and other appurtenances normally incident to the conduct of a public utility may be installed within a utility easement provided that no such structure may be installed without first obtaining a building permit and obtaining the approval of the ARB in accordance with these Zoning Regulations.

E. **Detached Accessory Buildings.** In any use district, a detached accessory building and shall not exceed twenty-four (24) feet or two (2) stories in height, and shall in no

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event be higher than the principal building, and shall not occupy more than twenty percent (20%) of a minimum rear yard or a side yard. No detached accessory building shall be closer than ten (10) feet to the principal building. The exterior materials of any accessory building shall be compatible with the exterior material of the principal building.

F. **Commercial Filming.** The City Council shall adopt regulations governing commercial filming in the City. In any use district and in all public areas of the City including, but not limited to, streets, parks and open areas, commercial filming shall be allowed, provided that any person or entity conducting such commercial filming complies with all commercial filming regulations adopted by the City Council. In adopting commercial filming regulations, the City Council may establish a permit requirement, a permit application process, permit fees, bond and insurance requirements, traffic and safety control requirements, time limitations for filming and such other regulations as the City Council deems appropriate.

Ord. 1373 08-12-13

5-133. Fences, Walls and Retaining Walls; Purpose and Intent. To preserve open space areas, to recognize the diversity of the subdistricts in the City, to afford reasonable privacy, to ensure public safety and to maintain adequate minimum standards for fences and walls within the City, the following requirements pertaining to erection and construction of fences, walls and retaining walls within the Districts of the City are established.

Ord. 1267 09-14-09

5-134. Materials and Designs for Fences and Walls Other Than Retaining Walls.

A. **Prohibited Fence Materials.** In District R-1, the following fence materials are prohibited:

1. Chain link or cyclone fence more than four (4) feet in height that is not being used to enclose a dog containment area or to enclose an outdoor recreational facility;
2. An aboveground fence carrying an electrical current;
3. Barbed wire fence; and
4. Chicken wire fence.

B. **ARB Approval Required for All Fences and Walls.** In District R-1, no fence or wall shall be constructed without the approval of the ARB in accordance with the provisions of Section 5-143. If a proposed fence or wall is to be constructed on a corner lot, the ARB may impose limitations on the allowed height and location of the fence or wall where the topography or dimensions of the corner lot are unusual, where a street side of the lot is curved or where the main front wall of the principal building does not run parallel to a street, and if such limitations are necessary to ensure that the fence or wall is in accordance with the standards set forth in

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Section 5-146.

Ord. 1267 09-14-09

5-135. Height and Location for Fences and Walls Other Than Retaining Walls. A fence or wall that has been approved by the ARB in accordance with Section 5-143, may be constructed in District R-1 only if allowed in the following subparagraphs:

A. **Rear Yard.** Fences or walls may be constructed in the rear yard at the following heights and locations:

1. A solid or partially open fence or wall not exceeding more than six (6) feet in height may be located anywhere in the rear yard; and
2. A solid or partially open fence or wall not exceeding more than seven (7) feet in height may be located in the rear yard if approved by the ARB; provided that the ARB shall not approve such a fence or wall, unless it finds that the requirements set forth in Section 5-146 exist and in considering such findings shall, in addition to other applicable factors, examine the following factors:
 - (a) The height of adjoining fences or walls;
 - (b) Any unique topography or shape of the lot on which the fence or wall is to be located or any unique topography or shape of adjoining lots;
 - (c) The purpose for exceeding the established height limitation;
 - (d) Whether the proposed fence or wall is a replacement of an existing fence with board fences having similar characteristics, i.e., height, materials and location;
 - (e) The length of the proposed fence or wall that will exceed the established height limitation;
 - (f) The safety of the property owner and neighborhood; and
 - (g) The adverse impact, if any, upon the adjoining properties.

B. **Side Yard.** Fences or walls may be constructed in the side yard at the following heights and locations:

1. A solid or partially open fence or wall not exceeding more than four (4) feet in height may be located anywhere in the side yard;

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2. A solid or partially open fence or wall not exceeding more than six (6) feet in height may be constructed in the side yard, provided that it is set back at least fifteen (15) feet from the front yard.

C. **Front Yard.** No fence or wall may be located in the front yard.

Ord. 1267 09-14-09

5-136. Location of Inferior Side of Fence or Wall. Unless the side of the fence or wall facing outwardly to a street or neighboring lot is identical in appearance to the side facing inwardly, every fence or wall shall be constructed with the inferior side facing inwardly so that no posts, rails, supports or other construction details are facing outwardly to a street or neighboring lot.

Ord. 1267 09-14-09

5-137. Retaining Walls.

A. **Retaining Walls Existing Prior to September 20, 1989.** Retaining walls that existed on any lot prior to September 20, 1989, may be replaced in substantially the same location and with substantially the same materials without the approval of the ARB; provided that (a) any such replacement shall be located at least two (2) feet back from any street line; and (b) a building permit for the replacement structure shall be obtained prior to any construction.

B. **Retaining Walls Constructed On or After September 20, 1989.** Except as provided in Section 5-137, no retaining wall shall be constructed on or after September 20, 1989, without the approval of the ARB. In considering all plans and specifications submitted in connection with a building permit application that includes the construction of a retaining wall, the ARB shall not approve such plans and specifications as to the retaining wall, unless it finds that the requirements set forth in Section 5-146 exist and in considering such findings shall, in addition to other applicable factors, examine the following factors:

1. The height and location of the proposed retaining wall recognizing:
 - (a) That the greater the height of the retaining wall facing an adjoining property or street, the greater the likelihood of an adverse impact on an adjoining property or the neighborhood, particularly if the wall is located in close proximity to an adjoining property or street;
 - (b) Conversely, that the lower the height of the retaining wall facing an adjoining property or street, the less the likelihood of an adverse impact on an adjoining property or the neighborhood;
2. The design and materials of the proposed retaining wall recognizing that design and materials should be in general conformity with the style and design of surrounding structures;

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3. The effect of the retaining wall on surface drainage, recognizing that the proposed retaining wall should not cause the surface drainage to change in a manner that would adversely affect surrounding properties; and
4. The purpose for the retaining wall, recognizing:
 - (a) That if the retaining wall is being constructed to retain soil that has been relocated from one part of the property to another part of the property creating a change in the topography or soil brought on the property from offsite, the greater the likelihood of an adverse impact on adjoining property and the neighborhood;
 - (b) That legitimate safety and drainage requirements for a retaining wall may outweigh any negative appearance impact of the retaining wall on the neighborhood; and
 - (c) That alternative solutions may remove or limit the need for a retaining wall.

The ARB may within its powers, approve or deny a proposed retaining wall of any height, design, materials and at any location, or the ARB may modify the height, design, materials or location of the retaining wall as in its opinion should be done under the circumstances.

Ord. 1267 09-14-09

5-138. Fences and Walls; Additional Provisions.

A. **Fences and Walls Combined.** The total height of fences and walls built in combination shall not exceed established height limitations.

B. **Fences and Retaining Walls Combined.** A fence may be located on top of an approved retaining wall provided that the total height of the fence and retaining wall (as determined in Section 5-138) does not exceed the height limitations established for fences.

C. **Building Line Restriction.** No fence or wall, with the exception of retaining walls, shall be located closer to street lines than the applicable building lines of said lot or lots.

D. **Corner Lots.** Notwithstanding any other provision of Section 5-138, on a reverse corner lot no fence or wall shall be closer to the side street line than one-half ($\frac{1}{2}$) of the depth of the front yard of the adjacent interior lot. On a corner lot where the adjacent interior lot fronts on the same street as the corner lot and the corner lot is not a reverse corner lot, no fence or wall shall be closer than fifteen (15) feet to the side street line of the corner lot.

E. **Outdoor Recreational Facilities.** Notwithstanding any other provision of Section 5-133, a fence intended as a back or side stop for a recreational facility that is located

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immediately adjacent to the surface floor of the facility may be no more than ten (10) feet in height, provided that the surface area of each section of the fence has a minimum of fifty (50) percent open area allowing an unobstructed view through the fence.

F. **Dog Containment Area.** Notwithstanding any other provision of Sections 5-133 through 138, a fence that is used solely to contain a dog or dogs may be no more than six (6) feet in height, provided that it encloses no more than one hundred (100) square feet in area and is located solely in the rear yard no closer than ten (10) feet from either side or rear lot line. The dog containment area must be located within a privacy fence.

G. **Proximity to Other Fences.** No fence shall be located closer than three (3) feet to another fence located on the same property.

H. **Determination of Height.** The height of a fence or wall or combination thereof shall be determined by measuring the distance from finished grade on the side facing outwardly to a street or neighboring lot to the highest point of the fence or wall, excluding posts. Where a fence is built on top of a retaining wall, the height of the fence shall be determined by measuring the distance from finished grade on the side facing outwardly to a street or neighboring lot to the highest point of the fence, excluding posts. Where the terrain is irregular, the City Administrator shall determine the height by calculating the mean height of an appropriate fence, wall, or retaining wall section, provided that the section shall not be more than ten (10) feet in length.

I. **Unique Circumstances.** The height requirements established by this section may be exceeded by not more than six (6) inches in situations where such additional height is necessary to allow for normal installation.

J. **Fences and Walls in Districts C-1 and D-1.** No provision contained in Section 5-133 or any section of the Zoning Regulations shall apply to any City property. No fence or wall for any other property located in District C-1 or D-1 may be constructed without the approval of the ARB. In considering an application to construct such a fence or wall, the ARB shall apply the standards set forth in Section 5-146 and, in doing so, may impose such limitations on height, location, materials and design as the ARB, in its sole discretion, deems appropriate.

K. **Construction Fence.** Notwithstanding any other provision of Sections 5-133 through 138, the City Administrator may require the erection of a temporary fence to enclose and conceal a demolition or construction site to protect the public, otherwise consistent with the provisions in Sections 5-103.44, 5-1026 and 5-1028, and such fence shall be of a height, material and at a location deemed necessary by the City Administrator.

Ord. 1267 09-14-09

5-139. Off-Street Parking.

A. For all buildings or structures hereafter erected, moved, altered, enlarged or used, off-street parking space in the form of garages or areas made available exclusively for parking purposes shall be provided as required by the parking codes given in the regulations for Districts

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R-1, C-1 and D-1. Such parking space shall be located on the premises with no portion except the necessary drives extending into any street or other public way.

B. Parking spaces shall be at least eight and five-tenths feet by eighteen feet (8.5 x 18.0) in size. The number of parking spaces shall not be less than the number set out in the following parking code:

1. Parking Code: 2/DU:

Two (2) parking spaces per dwelling unit which shall be in the form of garages.

2. Parking Code: ARB:

Requirements set by the ARB after study of individual situation.

Ord. 1267 09-14-09

5-140. Architectural Review Board; Purpose and Creation. For the purposes of ensuring that all structures within the City conform to certain minimum architectural and aesthetic standards of appearance and all structures conform with surrounding structures; preventing the erection of structures detrimental to the stability of values of surrounding properties; insuring the conformity to the design principles of the Comprehensive Plan; and, promoting the health, safety, and general welfare of the residents of the City, there is hereby established an Architectural Review Board (hereinafter "ARB").

Ord. 1267 09-14-09

5-141. ARB; Membership Terms and Officers.

A. From and after October 12, 1988, the ARB has consisted and shall continue to consist of five (5) members who shall be appointed by the Mayor with the approval of the City Council. Members of the ARB shall be residents of the City, or individuals who own property in the City, and intend to reside in the City within twelve (12) months of the date of appointment to the ARB. If residency is not achieved within this twelve (12) month period, that individual's membership shall terminate. Existing members of the ARB shall continue to serve for a term of three (3) years from the date of their appointment, and at the expiration of such term, an appointment for that position shall be made at the same time as other officers of the City and the member shall serve for a term of three (3) years. Vacancies shall be filled by appointment for the unexpired term. All members of the ARB shall serve without compensation. In appointing members to the ARB, the Mayor and Council shall give due consideration to the appointment of members to the ARB who have a background in design, building construction, architecture, engineering and landscape architecture, provided that this consideration shall not be construed to require the appointment of individuals with such backgrounds.

B. **Officers.** The ARB shall annually elect from its membership a Chair and a

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Vice-Chair. The ARB shall also appoint a Secretary who need not be a member of the ARB.

Ord. 1267 09-14-09

5-142. ARB Meetings.

A. **Minutes.** Minutes shall be kept of the ARB proceedings. The minutes shall accurately reflect the business conducted by the ARB. No minutes shall be made of deliberative or executive sessions of the ARB permitted to be closed sessions under the law. The official minutes of the ARB shall be signed by the Secretary and filed at City Hall. If the application for a permit will require a variance or exception from the Board of Zoning Appeals prior to obtaining a building permit, the minutes of the ARB shall be furnished to the Board of Zoning Appeals prior to its hearing.

B. **Meetings and Quorum.** Meetings of the ARB shall be at the call of the Chair and at such other times as the ARB may determine. No meeting of the ARB shall be conducted without a quorum. A quorum of the ARB shall be three (3) members.

C. **Motions and Voting.** All matters requiring a decision of the ARB shall be determined upon a motion by a member. No motion may be made unless a quorum is in attendance. A vote shall be taken on all motions that are made by a member of the ARB and seconded by another member of the ARB. The Chair shall specify the manner in which a vote shall be taken, provided that any member may request and by doing so require a roll call vote. A motion shall fail unless at least two (2) members vote thereon and a majority of those voting are in favor of the motion. No binding action shall be taken by the ARB during any closed, deliberative or executive session.

Ord. 1267 09-14-09

5-143. Permit Applications for Exterior Work. All permit applications for exterior work shall be submitted to the ARB for its consideration and approval after an application has been properly filed with the City Clerk. No permit shall be issued to the applicant for such a permit without the approval of the ARB.

Ord. 1335 01-09-12

5-144. ARB Certification of Certain Exterior Work. Annually, or as soon thereafter as may be practical, the ARB shall determine what exterior work is or would be routinely approved by the ARB for subdistricts of District R-1. Such exterior work shall be described in adequate detail and certified by the ARB that such exterior work is approved for use in specified subdistricts in accordance with the standards set forth in Section 5-146. In certifying any exterior work, the ARB may limit the certification to specific subdistricts, and may except from certification corner lots or such other situations as the ARB deems proper. Any property or situation subject to such a limitation or exception may obtain ARB approval after hearing. The ARB certification of exterior work shall bear the signatures of at least a majority of the entire ARB. If any exterior work has been so certified by the ARB and the exterior work otherwise

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conforms to these Zoning Regulations, the permit for the work shall be deemed submitted to the ARB and approved by the ARB and no further ARB approval shall be required for the issuance of a permit for the construction of the fence or other approved exterior work. Notwithstanding anything herein contained to the contrary, the City Administrator shall determine whether any proposed exterior work has been certified hereunder by the ARB. If the City Administrator determines that any proposed exterior work has not been certified hereunder by the ARB, the proposed exterior work shall be submitted to the ARB for its consideration pursuant to Section 5-145.

Ord. 1267 09-14-09

5-145. Hearing Procedure.

A. **Hearing Before ARB.** Except as provided in Section 5-144, all permit applications for exterior work filed pursuant to Section 5-1026 and all other matters referred to the ARB under these Zoning Regulations shall be considered by the ARB at a hearing to be held at City Hall. All hearings before the ARB shall be open to the public, provided that the ARB may adjourn to a deliberative or executive session when such action would not be in conflict with applicable Kansas law.

B. **Time for Hearing.** After a permit application for exterior work has been properly filed with the City Clerk, the Chair and the City Clerk shall establish a reasonable date and time for the hearing. If the ARB fails to act on a permit within sixty (60) days after the permit has been properly filed with the City Clerk, the person requesting the permit may deem the permit denied; provided, however, that the continuance of a matter shall serve to extend this time period.

C. **Notice of Hearings.** For a hearing before the ARB on a building permit application, the applicant for the permit, owners of adjoining properties within the city limits of the City of Mission Hills, and any other person requesting notice of the hearing shall be entitled to notice ("persons entitled to notice"). A hearing before the ARB on a building permit application for a Substantial Construction Matter shall be deemed a "Substantial Construction Hearing," and all occupants of residential properties within the city limits of the City of Mission Hills and located within five hundred feet (500') of the property for which application is submitted shall receive notice of the hearing. All persons entitled to notice for a Substantial Construction Hearing shall be mailed a notice of time, date and place of the hearing at least twenty-eight (28) calendar days prior to the date of hearing. All other persons entitled to notice shall be mailed a notice of the time, date and place of the hearing not less than five (5) calendar days prior to the date of such hearing unless such notice is waived by the parties entitled to such notice. Failure to receive notice of an ARB hearing shall not be a basis for objecting to any action taken by the ARB at a hearing. Attendance at a hearing, except for the purpose of objecting to the hearing, shall constitute a waiver of such notice. This notice provision shall not apply to continuances of matters already noticed.

D. **Hearing Procedure.** At a hearing on a permit application, the ARB shall allow

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the presentation of evidence by the applicant for the permit and by any other person determined by the ARB to have any appropriate interest in the application. At a hearing for any other matters referred to the ARB under these Zoning Regulations, the ARB shall allow the presentation of evidence by any person determined by the ARB to have an appropriate interest in the matter. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the ARB. The ARB may establish a limitation on the time allowed for the presentation of evidence.

E. **Rules.** The ARB may establish such other rules of procedure for conduct of hearings and for consideration and action upon matters presented to the ARB as it shall determine appropriate.

F. **Pre-Application Conference for Substantial Construction Matters.** All substantial construction matters involving a new or replacement Principal Building on a lot shall be presented at a Pre-Application Conference before the project may be noticed and placed on the agenda for a public hearing before the ARB. Following the Pre-Application Conference, and in order to expedite consideration of the application, the City staff may give direction to the applicant to construct story poles, clearly mark building footprints or take other measures designed to aid in the understanding of the project and its relationship to surrounding properties prior to the hearing on the application before the ARB.

Ord. 1373 08-12-13

5-146. Required Findings for ARB Approval of Building Permit. No plans or specifications submitted in connection with applications for a permit for exterior work filed pursuant to Section 5-1026, shall be approved by the ARB unless it finds:

A. That the structure to be erected or altered does, or will, meet the customary architectural requirements in appearance and design for a structure of the type proposed, and that the proposed structure is, or will be, in general conformity with the style and design of surrounding structures;

B. That the proposed structure will not adversely affect the values of surrounding properties and will not adversely affect the health, safety, and general welfare of the residents of the City; and

C. That the proposed structure conforms to the Design Guidelines adopted by the City Council or, if it does not conform to the Design Guidelines, that the applicant has provided sufficient justification for deviation from the Design Guidelines; and

D. That the proposed structure conforms to the principles of the Comprehensive Plan.

Ord. 1367 04-08-13

5-147. Factors To Be Examined When Considering Required Findings. When
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considering the required findings set forth in Section 5-146, the ARB shall, to the extent they are relevant to the application at issue, examine the following factors:

A. The design for the proposed structure recognizing that the design and style should be in general conformity with the style and design of surrounding structures but giving due consideration for appropriate diversity and individual taste;

B. The building materials for the proposed structure recognizing that the exterior facade of a structure, including siding, roofing material, stone and brick, should be in keeping with the surrounding properties' quality, construction and design so that the proposed structure does not adversely affect the property values of adjoining properties;

C. The height of the proposed structure recognizing that while the proposed structure may be within allowable height limitations, the height of the structure should bear a reasonable relationship to the neighborhood in which it is located but giving due consideration to allow for reasonable and appropriate development in the neighborhood;

D. The location of the proposed structure on the lot recognizing that the City contains many uniquely shaped lots that on occasion may require relocation of the proposed structure to ensure proper relationship of a proposed structure to structures on adjoining lots;

E. The overall size of the proposed structure recognizing that while a proposed structure may be within allowable setback limitations and may meet minimum or maximum size or lot coverage requirements, the proposed structure may be too massive, too small or otherwise disproportionate for the lot or overall neighborhood in which it is proposed even after allowing for reasonable and appropriate development in the neighborhood;

F. The proposed lot coverage, though equal to or less than the applicable maximum lot coverage percentage set forth in Section 5-123, is not appropriate at the proposed location, in light of all the factors to be examined.

G. Other factors the ARB is required to consider under these Zoning Regulations together with such other factors the ARB deems appropriate for consideration under the circumstances.

Ord. 1267 09-14-09

5-148. Building Permit Application for Church or Public Building. In considering applications for a building permit applicable to a church or public building, the ARB shall also consider and determine the appropriate height and size limitations and requirements for setbacks and open yards, taking into consideration the area of the land to be used, numbers of people to be served by the structure, density of the neighborhood, adequacy of streets serving the land and such other factors relating to the health, safety and general welfare of the residents of the City as the ARB determines appropriate.

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5-149. Powers. The ARB may within its power approve or deny a building permit application and in approving an application may attach such requirements and conditions as it deems appropriate under the circumstances, including but not limited to:

- A. A redesign of the proposed structure;
- B. Changes in the building materials for exterior facade of the proposed structure;
- C. A reduction or increase in the height of the proposed structure;
- D. A relocation of the proposed structure within required setbacks;
- E. An increase in the required setback requirements for the lot in question;
- F. A reduction or increase in the overall size of the structure;
- G. Landscaping requirements which may include requiring new trees, shrubs or other landscaping, or replacing existing trees, shrubs or other landscaping; and
- H. Requirements and conditions that the ARB is authorized to impose under other provisions of the Zoning Regulations;

In addition to the foregoing powers, the ARB shall also have such other powers as have been delegated to the ARB under these Zoning Regulations and shall have such additional powers as are necessary to ensure that the ARB's responsibilities are fulfilled.

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5-150. Public Liability Insurance or Bond. The ARB may require an applicant to obtain public liability insurance, or to post bond, of such kinds and in such amounts as it deems appropriate to protect the public.

Ord. 1267 09-14-09

5-151. Board of Zoning Appeals; Creation. An appeals board is hereby created, such board to be known as the Board of Zoning Appeals, hereafter referred to as Board, to hear all appeals or consider any matters referred to it under these Zoning Regulations or pursuant to any other ordinance.

Ord. 1267 09-14-09

5-152. BZA; Membership Terms. Members shall be bona fide residents of the City for at least three (3) years immediately prior to their becoming members of the Board, and no person holding any other public office or position in the government of the City shall be eligible for membership on the Board; except that one (1) member of the Planning Commission may be appointed to serve on the Board while continuing to serve on the Planning Commission. Prior to

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August 1, 2002, the Board has consisted of three (3) members. From and after August 1, 2002, the Board will consist of five (5) members who shall be appointed by the Mayor with approval of the City Council. Except as otherwise provided herein, a board member shall serve for a term of three (3) years and there shall be no limit on the number of terms a member may serve. Members of the Board serving on July 31, 2002, shall continue to serve the remainder of their term of three (3) years from the date of their appointment, and at the expiration of such term, an appointment for that position shall be made at the same time as other officers of the City. All membership terms shall be deemed to begin on May 1 of the year of appointment and shall expire on April 30 of the year in which the term ends; provided that a member shall continue to serve past the expiration of such term until a successor is appointed and qualified. Members appointed to the two (2) new positions created as of August 1, 2002, shall serve for a term of three (3) years; provided that to achieve staggered terms, one such member shall initially be appointed for a two-year term. All members shall serve without compensation. Vacancies shall be filled by appointment for the unexpired term.

Ord. 1267 09-14-09

5-153. BZA Officers.

A. **Chair and Vice-Chair.** The Board shall elect one of its members as a Chair and one of its members as a Vice-Chair. Each member so elected shall serve one (1) year or until their successors have been elected. There shall be no limit on the number of terms that any member may serve as Chair or Vice-Chair.

B. **Secretary.** The Board shall elect a Secretary. The Secretary need not be a member of the Board. The Secretary shall serve for a one (1) year term or until a successor has been elected. There shall be no limit on the number of terms that any person may serve as Secretary.

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5-154. BZA Board Minutes. Minutes shall be kept of Board proceedings. The minutes shall accurately reflect the business conducted by the Board, a summary of evidence presented at a public hearing, findings of fact by the Board, resolutions and other decisions of the Board and votes taken by the Board on any issue. Roll call votes shall be reflected in the minutes when the Chair or any member has called for a roll call vote. If any member is absent from a hearing or fails to vote, the minutes shall reflect this fact. The official minutes of the Board shall be approved by the Board, signed by the Secretary and filed at City Hall. No minutes shall be made of deliberative sessions of the Board that are permitted to be closed sessions under the law.

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5-155. BZA Meetings and Quorum. Meetings of the Board shall be at the call of the Chair and at such other times as the Board may determine. A quorum of the Board shall be three (3) members. A vote shall be taken on all motions that are made by a member of the Board and

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seconded by another member of the Board. The Chair shall specify the manner in which a vote shall be taken, provided that any member may request and by doing so, require a roll call vote. A motion shall fail unless three (3) members of the Board vote in favor of it. No binding action shall be taken by the Board during any closed deliberative session.

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5-156. Appeals and Hearing Procedure.

A. **Matters That May Be Appealed to the Board.** The following matters may be appealed to the Board in accordance with applicable law and the rules adopted by the Board:

1. **Appeal Requesting Variance From Zoning Regulations.** Whenever a person has been denied a building permit because the activity for which the permit is requested requires a variance from the Zoning Regulations to be lawful, such person may file an appeal to the Board requesting a variance from the Zoning Regulations.
2. **Appeal Requesting Exception From Zoning Regulations.** Whenever a person has been denied a permit because the activity for which the permit is requested requires an exception from the Zoning Regulations to be lawful, such person may file an appeal requesting an exception from the Zoning Regulations.
3. **Appeal From a Decision of the ARB, the City Administrator, City Clerk or Other Officer Administering the Provisions of the Zoning Regulations or Building Code.** An appeal to the Board may be taken by any person aggrieved, or by any officer of the City, County or any governmental agency or body affected by any decision of the ARB, the City Administrator, City Clerk or other officer administering the provisions of the Zoning Regulations or Building Code.

B. **Manner in Which Appeals Shall Be Filed.** All appeals to the Board shall be filed in writing with the City Clerk. The appeal shall set forth the grounds for the appeal and identify the person(s) filing the appeal.

C. **Appeal Fees.** No appeal will be deemed filed until any required fee is paid to the City Clerk. Each appeal shall be accompanied by a fee sufficient to cover the costs of the appeal which amount shall be determined by the Clerk. In determining such amount, the Clerk shall take into account only the costs of notice and other non-administrative costs.

D. **Time Within Which Appeals Must Be Filed.** An appeal requesting a variance or exception from the Zoning Regulations must be filed within thirty (30) days of the denial of the permit requested. All other appeals must be filed within thirty (30) days of the decision at issue.

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E. **Time for Hearing.** After an appeal has been properly filed with the City Clerk, the Chair and City Clerk shall fix a reasonable date and time for the hearing. If the Board fails to act on an appeal within sixty (60) days after an appeal has been properly filed with the City Clerk, the person appealing may deem the request denied.

F. **Published Notice.** After an appeal has been properly filed and the time for hearing set, notice of the time, place and subject of such hearing shall be published in the official City newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of the notice shall be mailed by the City Clerk to each party to the appeal, to owners of property within the city limits of the City of Mission Hills located adjacent to any property at issue in the appeal, to any other person requesting notice of the hearing, and to the Planning Commission. Mailed notice shall be deemed complete on mailing.

G. **Hearing Procedure.** The Board shall conduct hearings for the presentation of evidence and the hearings shall be open to the public, provided that the Board may conduct closed deliberative sessions as provided under Kansas law. The Board may adopt by-laws governing its hearing procedure in conformity with the laws of the State of Kansas and these Zoning Regulations.

Ord. 1373 08-12-13

5-157. BZA Appeal Requesting a Variance. The Board of Zoning Appeals may authorize in specific cases a variance from specific terms of the Zoning Regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations will be observed, public safety and welfare secured and substantial justice done. Whenever an appeal is filed with the Board requesting a variance from the Zoning Regulations, the Board may grant a variance upon a finding by the Board that all of the following conditions have been met:

A. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;

B. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

C. That the strict application of the provisions of the Zoning Regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

D. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and

E. That granting the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations.

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No variance may permit any use not permitted by the Zoning Regulations in such district. In granting any variance, the Board shall prescribe any condition that it deems to be necessary or desirable.

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5-158. BZA Appeal Requesting Exception to the Zoning Regulations. The Board may grant exceptions to the provisions of the Zoning Regulations in those instances where the Board is specifically authorized to grant such exceptions and only under the terms of the Zoning Regulations. In no event shall exceptions to the provisions of the Zoning Regulations be granted when the use or exception contemplated is not specifically listed as an exception to the Zoning Regulations. Under no conditions shall the Board have the power to grant an exception when conditions of this exception, as established in the Zoning Regulations, are not found to be present. No such exception shall be granted by the Board unless it finds that the use for which such exception is sought will not, in the circumstances of the particular case and under any conditions that the Board considers to be necessary or desirable, be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may place such conditions on an exception that it deems necessary, including but not limited to, operation, site development, signs and time limits.

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5-159. BZA Appeals From a Decision of the ARB, the City Administrator, City Clerk or Other Officer Administering the Provisions of the Zoning Regulations or Building Code. The Board shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the ARB, City Administrator, City Clerk or other officer administering the provisions of the Zoning Regulations or Building Code. If a decision of the ARB or officer is appealed, the ARB or officer whose decision has been appealed, as the case may be, when notified by the City Clerk of the appeal, shall arrange to transmit to the Board all papers constituting the record upon which the action appealed from was taken. Within its powers, the Board may reverse or affirm, wholly or in part, or modify the order, requirements, decision or determination as in its opinion should be done under the circumstances. The Board may adopt a standard of review that it will follow in hearing any appeal to it from a decision of the ARB, the City Administrator, City Clerk or other officer administering the provisions of the Zoning Regulations or Building Code.

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5-160. General Powers of BZA. The Board shall have such other powers and duties as are prescribed by Kansas law. With respect to any appeal before the Board or any matter referred to it under these Zoning Regulations, the Board shall have all of the powers of the officer or board from whom the appeal is taken and it may issue or direct the issuance of a permit.

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5-161. Decision by the BZA. The final disposition of any appeal to the Board shall be in the form of a resolution, which shall affirm, modify or reverse the order or decision from which the appeal is taken. The resolution shall contain the Board's findings of fact with respect to the appeal and shall be adopted by the Board and made a part of the Board's minutes.

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5-162. Appeals From Decision by the BZA. Any person, official or governmental agency dissatisfied with any order or determination of the Board may bring an action in the District Court of Johnson County, Kansas, to determine the reasonableness of any such order or determination. Such appeal shall be filed within thirty (30) days of the final decision of the Board. A decision of the Board shall not be a final decision until the Board adopts a resolution setting forth its decision in writing.

5-163. Planning Commission.

A. **Creation.** There is hereby created a City Planning Commission to hear all matters referred to it under law.

B. **Membership Terms.** From and after May 13, 1985, the Planning Commission has consisted and continues to consist of nine (9) members of which two (2) members may reside outside of but within three (3) miles of the corporate limits of the City. Members shall be appointed by the Mayor and approved by the City Council. All members shall serve without compensation. Existing members of the Commission shall continue to serve for a term of three (3) years from the date of their appointment, and at the expiration of such term, an appointment for that position shall be made at the same time as other officers of the City and the member shall serve for a term of three (3) years. All vacancies shall be filled by appointment for the unexpired term.

C. **Removal of Commission Members.** At the request of the Mayor that a Commission member be removed, the Council shall consider the request and may by majority vote of the membership of the Council remove the Commission member.

D. **Planning Commission By-laws.** The Planning Commission shall adopt by-laws for the transaction of business and hearing procedures.

E. **Power and Duties.** The Planning Commission shall have such powers and duties as provided in the Kansas Statutes Annotated, as amended from time to time.

Ord. 1267 09-14-09

5-164. Amendments.

A. **Initiation of Amendments and Fees.** The City Council, from time to time, may supplement, change or generally revise the boundaries or regulations contained in the Zoning Regulations by amendment. A proposal for such amendment may be initiated by the City

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Council or the Planning Commission. If such proposed amendment is not a general revision of the existing Zoning Regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Any application of the owner of property affected shall be filed with the City Clerk and shall be accompanied by a fee to cover the costs of amendment and shall be in an amount to be determined by the City Clerk. In determining such amount, the Clerk shall take into account only the costs of notice and other non-administrative costs.

B. **Tentative Recommendations and Notice of Hearing.** All proposed amendments shall first be submitted to the Planning Commission for recommendation. The Planning Commission shall hold a public hearing thereon and shall cause an accurate written summary to be made of the proceedings. The Planning Commission may develop proposed Zoning Regulations in advance of a public hearing thereon. Notice of such public hearing shall be published at least once in the official City newspaper at least twenty (20) days prior to the date set for the hearing. Such notice shall fix the time and place for the hearing and shall contain a statement regarding the proposed changes in regulations or restrictions or in the boundary of any zone or district. If the proposed amendment is not a general revision of existing ordinances and will affect specific property, the notice shall designate such property by legal description or a general description sufficient to identify the property and, in addition to the published notice, written notice of the proposed amendment shall be mailed to all owners of record of lands located within two hundred (200) feet of the area proposed to be altered. All notices for an amendment that is not a general revision of existing ordinances and which will affect specific property shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.

C. **Effective Notice.** When the mailed notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the governing body. Published and mailed notice is sufficient to permit the Planning Commission to recommend amendments to the Zoning Regulations which affect only a portion of the land described in the notice or which give all or any part of the land described, a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless the Planning Commission has previously established a table or publication available to the public which designates which zoning classification or lesser changes authorized within the published zoning classifications.

D. **Hearing Before the Planning Commission.** Public hearings before the Planning Commission shall be conducted in accordance with the by-laws of the Planning Commission. At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard. The hearing on the proposed amendment may be adjourned from time to time.

E. **Planning Commission Recommendation on Amendment.** A majority of the members of the Planning Commission present and voting at the hearing shall be required to

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recommend approval or denial of the amendment to the governing body. The amendment to the Zoning Regulations to be acted upon shall be in the form of a proposed zoning ordinance. If the Planning Commission fails to make a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of disapproval.

F. **City Council Consideration.** After action by the Planning Commission, the Commission shall submit the proposed ordinance as to which action was taken with a description of the action taken, and an accurate written summary of its hearings thereon, to the City Council. When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the governing body may:

1. Adopt such recommendation by ordinance;
2. Override the Planning Commission's recommendations by a two-thirds (2/3) majority vote of the membership of the City Council; or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

If the City Council returns the Planning Commission's recommendation, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit a new and amended recommendation. Upon the receipt of such recommendation, the City Council, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by ordinance, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the City Council following the Planning Commission's next regular meeting after receipt of the City Council's report, the City Council shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

G. **Rezoning and Effective Date.** The proposed rezoning shall become effective upon publication of the adopting ordinance.

H. **Amendment Affecting Boundaries of Zone or District.** If such amendment shall affect the boundaries of any zone or district, the ordinance shall describe the boundaries as amended, or if the City has made provision for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, and shall amend the section of the ordinance incorporating the same and reincorporate such map as amended.

I. **Protest Petition.** Regardless of whether or not the Planning Commission approves or disapproves a proposed amendment to these Zoning Regulations if a protest petition

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against such amendment is filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of record of twenty percent (20%) or more of any real property proposed to be rezoned or by the owners of record of twenty percent (20%) of the total area, excepting public streets and ways, located within or without the corporate limits of this City and located within two hundred (200) feet of the boundaries of the property proposed to be rezoned, the ordinance adopting such amendment shall not be passed except by at least a three-fourths ($\frac{3}{4}$) vote of all of the members of the City Council.

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5-165. Matters to be Considered When Considering a Rezoning Request. When the Planning Commission is deciding whether to recommend approval or disapproval of a rezoning request and when the City Council is acting on a rezoning request, the Planning Commission and City Council shall consider the following matters:

- A. The character of the neighborhood;
- B. The zoning and uses of properties nearby;
- C. The suitability of the subject property for the uses to which it has been restricted;
- D. The extent to which the removal of restrictions will detrimentally affect nearby properties;
- E. The length of time the subject property has remained vacant as zoned;
- F. The relative gain to public health, safety and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual owner;
- G. Consideration of the recommendations of permanent City staff; and
- H. The conformance of the requested change to the Comprehensive Plan.

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5-166. Enforcement. The City Administrator shall enforce the provisions of these Zoning Regulations.

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5-167. Reserved.

5-168. Severability. If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

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